John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

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**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S WITNESS AND EXHIBIT LIST

Defendant James Dondero ("Dondero") hereby files this Witness and Exhibit List with respect to the trial on *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Dkt. 1] (the "Complaint") set for docket call on May 10, 2021 and trial during the week of May 17, 2021 (the "Hearing") in the above-styled adversary proceeding (the "Adversary Proceeding").

A. Documents that Dondero may use as exhibits:

Dondero Exhibit No.	Description	Offered	Objection	Admitted by Agreement	Admitted
1.	Amended and Restated Shared Services Agreement, dated effective as of January 1, 2018, by and between Highland Capital Management, L.P. and NexPoint Advisors, L.P.				
2.	Second Amended and Restated Shared Services Agreement by and between Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P., dated February 8, 2013				
3.	Debtor's Notice of Termination of Shared Services Agreement with NexPoint Advisors, L.P. effective January 31, 2021				
4.	Debtor's Notice of Termination of Shared Services Agreement with Highland Capital Management Fund Advisors, L.P. effective January 31, 2021				
5.	Debtor's Fifth Amended Plan of Reorganization (as modified) [Docket No. 1808]				
6.	Order Confirming Fifth Amended Plan of Reorganization [Docket No. 1943]				
7.	Term Sheet [Docket No. 354 and 354-1]				
8.	Amended Operating Protocols [Docket No. 466-1]				
9.	Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing				

	for Future Estate Transactions Occurring Outside the Ordinary Course of Business [Docket No. 1546]				
10.	James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction [Adv. Dkt. 52]				
11.	James Dondero's Objection and Response to Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause [Adv. Dkt. 110]				
12.	Transcript of December 10, 2020 Hearing				
13.	Transcript of January 8, 2021 Hearing				
14.	Transcript of January 26, 2021 Hearing				
15.	Transcript of March 22, 2021 Hearing				
16.	Transcript of March 24, 2021 Hearing				
17.	Dondero's Petition for Writ of Mandamus to the Fifth Circuit				
18.	Dondero's Objections and Responses to Debtor's First Request for Production				
19.	Email from Bryan Assink to Debtor's counsel containing Dondero's Objections and Responses to Debtor's First Request for Production, dated December 31, 2020				
	Any document or pleading filed in the above-captioned adversary proceeding, including any document attached thereto				

	Any document or pleading filed in the above-captioned bankruptcy case, including any document attached thereto				
	Any exhibit necessary for impeachment or rebuttal purposes				
	Any and all documents identified or offered by any other party				

Dondero reserves the right to supplement this Exhibit List should he determine that any other document may be helpful to the trier of fact, whether in his case in chief or rebuttal.

B. Witnesses that Dondero may call to testify:

1. James. P. Seery, Jr.;
2. James Dondero;
3. Scott Ellington;
4. Isaac Leventon;
5. Jason Post;
6. Dustin Norris;
7. Jean Paul Sevilla;
8. Any and all other witnesses identified or called by any other party; and
9. Any witness necessary for rebuttal.

Dondero reserves the right to supplement this Witness List should he determine that any other witness may be helpful to the trier of fact, whether in his case in chief or rebuttal.

.

Dated: April 26, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: john@bondsellis.com
Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on April 26, 2021, a true and correct copy of the foregoing document with exhibits was served via the Court's CM/ECF system on counsel for the Debtor.

/s/ Bryan C. Assink
Bryan C. Assink

AMENDED AND RESTATED SHARED SERVICES AGREEMENT

This Amended and Restated Shared Services Agreement (as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof, this "Agreement"), dated effective as of January 1, 2018, is entered into by and between NexPoint Advisors, L.P., a Delaware limited partnership, as the management company hereunder (in such capacity, the "Management Company"), and Highland Capital Management, L.P., a Delaware limited partnership ("Highland"), as the staff and services provider hereunder (in such capacity, the "Staff and Services Provider" and together with the Management Company, the "Parties").

RECITALS

WHEREAS, the Staff and Services Provider is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act");

WHEREAS, the Staff and Services Provider and the Management Company are engaged in the business of providing investment management services;

WHEREAS, the Parties entered into that certain Shared Services Agreement, dated effective as of January 1, 2013 (the "Original Agreement");

WHEREAS, the Parties desire to amend and restated the Original Agreement and the Staff and Services Provider is hereby being retained to provide certain back- and middle-office services and administrative, infrastructure and other services to assist the Management Company in conducting its business, and the Staff and Services Provider is willing to make such services available to the Management Company, in each case, on the terms and conditions hereof;

WHEREAS, the Management Company may employ certain individuals to perform portfolio selection and asset management functions for the Management Company, and certain of these individuals may also be employed simultaneously by the Staff and Services Provider during their employment with the Management Company; and

WHEREAS, each Person employed by both the Management Company and the Staff and Services Provider as described above (each, a "Shared Employee"), if any, is and shall be identified on the books and records of each of the Management Company and the Staff and Services Provider (as amended, modified, supplemented or restated from time to time).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, and the Original Agreement is hereby amended, restated and replaced in its entirety as follows.

ARTICLE I

DEFINITIONS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

Dondero Ex. 1

"Affiliate" shall mean with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term "control" means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

"Applicable Asset Criteria and Concentrations" means any applicable eligibility criteria, portfolio concentration limits and other similar criteria or limits which the Management Company instructs in writing to the Staff and Services Provider in respect of the Portfolio or one or more Accounts, as such criteria or limits may be modified, amended or supplemented from time to time in writing by the Management Company;

"Applicable Law" shall mean, with respect to any Person or property of such Person, any action, code, consent decree, constitution, decree, directive, enactment, finding, guideline, law, injunction, interpretation, judgment, order, ordinance, policy statement, proclamation, formal guidance, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, writ, or any particular section, part or provision thereof of any Governmental Authority to which the Person in question is subject or by which it or any of its property is bound.

"Client or Account" shall mean any fund, client or account advised by the Management Company, as applicable.

"Covered Person" shall mean the Staff and Services Provider, any of its Affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)).

"Governmental Authority" shall mean (i) any government or quasi-governmental authority or political subdivision thereof, whether national, state, county, municipal or regional, whether U.S. or non-U.S.; (ii) any agency, regulator, arbitrator, board, body, branch, bureau, commission, corporation, department, master, mediator, panel, referee, system or instrumentality of any such government, political subdivision or other government or quasi-government entity, whether non-U.S. or U.S.; and (iii) any court, whether U.S. or non-U.S.

"Indebtedness" shall mean: (a) all indebtedness for borrowed money and all other obligations, contingent or otherwise, with respect to surety bonds, guarantees of borrowed money, letters of credit and bankers' acceptances whether or not matured, and hedges and other derivative contracts and financial instruments; (b) all obligations evidenced by notes, bonds, debentures, or similar instruments, or incurred under bank guaranty or letter of credit facilities or credit agreements; (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to any property of the Management Company or any subsidiary; (d) all capital lease obligations; (e) all indebtedness guaranteed by such Person or any of its subsidiaries; and (f) all indebtedness guaranteed by such Person or any of its subsidiaries.

"Operating Guidelines" means any operating guidelines attached to any portfolio management agreement, investment management agreement or similar agreement entered into between the Management Company and a Client or Account.

"Portfolio" means the portfolio of securities and other assets, including without limitation, financial instruments, equity investments, collateral loan obligations, debt securities, preferred return notes and other similar obligations held directly or indirectly by, or on behalf of, Clients and Accounts from time to time;

"Securities Act" shall mean the Securities Act of 1933, as amended.

Section 1.02 Interpretation. The following rules apply to the use of defined terms and the interpretation of this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) "or" is not exclusive (unless preceded by "either") and "include" and "including" are not limiting; (iii) unless the context otherwise requires, references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented, waived and otherwise modified from time to time; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor; (v) a reference to a Person includes its successors and assigns; (vi) a reference to a Section without further reference is to the relevant Section of this Agreement; (vii) the headings of the Sections and subsections are for convenience and shall not affect the meaning of this Agreement; (viii) "writing", "written" and comparable terms refer to printing, typing, lithography and other shall mean of reproducing words in a visible form (including telefacsimile and electronic mail); (ix) "hereof", "herein", "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; and (x) references to any gender include any other gender, masculine, feminine or neuter, as the context requires.

ARTICLE II

SERVICES

Section 2.01 General Authority. Highland is hereby appointed as Staff and Services Provider for the purpose of providing such services and assistance as the Management Company may request from time to time to, and if applicable, to make available the Shared Employees to, the Management Company in accordance with and subject to the provisions of this Agreement and the Staff and Services Provider hereby accepts such appointment. The Staff and Services Provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Section 2.02 Provision of Services. Without limiting the generality of Section 2.01 and subject to Section 2.04 (Applicable Asset Criteria and Concentrations) below, the Staff and Services Provider hereby agrees, from the date hereof, to provide the following back- and middle-office services and administrative, infrastructure and other services to the Management Company.

(a) *Back- and Middle-Office*: Assistance and advice with respect to back- and middle-office functions including, but not limited to, investment research, trade desk services,

including trade execution and settlement, finance and accounting, payments, operations, book keeping, cash management, cash forecasting, accounts payable, accounts receivable, expense reimbursement, vendor management, and information technology (including, without limitation, general support and maintenance (OMS, development, support), telecom (cellphones, telephones and broadband) and WSO);

(b) *Legal/Compliance/Risk Analysis.* Assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis;

(c) *Tax.* Assistance and advice with respect to tax audit support, tax planning and tax preparation and filing.

(d) *Management of Clients and Accounts.* Assistance and advice with respect to (i) the adherence to Operating Guidelines by the Management Company, and (ii) performing any obligations of the Management Company under or in connection with any back- and middle-office function set forth in any portfolio management agreement, investment management agreement or similar agreement in effect between the Management Company and any Client or Account from time to time.

(e) *Valuation.* Advice relating to the appointment of suitable third parties to provide valuations on assets comprising the Portfolio and including, but not limited to, such valuations required to facilitate the preparation of financial statements by the Management Company or the provision of valuations in connection with, or preparation of reports otherwise relating to, a Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity;

(f) *Execution and Documentation.* Assistance relating to the negotiation of the terms of, and the execution and delivery by the Management Company of, any and all documents which the Management Company considers to be necessary in connection with the acquisition and disposition of an asset in the Portfolio by the Management Company or a Client or Account managed by the Management Company, transactions involving the Management Company or a Client or Account managed by the Management Company, and any other rights and obligations of the Management Company or a Client or Account managed by the Management Company;

(g) *Marketing.* Provide access to marketing team representatives to assist with the marketing of the Management Company and any specified Clients or Accounts managed by the Management Company conditional on the Management Company's agreement that any incentive compensation related to such marketing shall be borne by the Management Company;

(h) *Reporting.* Assistance relating to any reporting the Management Company is required to make in relation to the Portfolio or any Client or Account, including reports relating to (i) credit facility reporting and purchases, sales, liquidations, acquisitions, disposals, substitutions and exchanges of assets in the Portfolio, (ii) the requirements of an applicable regulator, or (iii) other type of reporting which the Management Company and Staff and Services Provider may agree from time to time;

(i) *Administrative Services.* The provision of office space, information technology services and equipment, infrastructure, rent and parking and other related services requested or utilized by the Management Company from time to time;

(j) *Shared Employees.* To the extent applicable, the provision of Shared Employees and such additional human capital as may be mutually agreed by the Management Company and the Staff and Services Provider in accordance with the provisions of Section 2.03 hereof;

(k) *Ancillary Services.* Assistance and advice on all things ancillary or incidental to the foregoing; and

(l) *Other.* Assistance and advice relating to such other back- and middle-office services in connection with the day-to-day business of the Management Company as the Management Company and the Staff and Services Provider may from time to time agree.

For the avoidance of doubt, none of the services contemplated hereunder shall constitute investment advisory services, and the Staff & Services Provider shall not provide any advice to the Management Company or perform any duties on behalf of the Management Company, other than the back- and middle-office services contemplated herein, with respect to (a) the general management of the Management Company, its business or activities, (b) the initiation or structuring of any Client or Account or similar securitization, (c) the substantive investment management decisions with respect to any Client or Account or any related collateral obligations or securitization, (d) the actual selection of any collateral obligation or assets by the Management Company, (e) binding recommendations as to any disposal of or amendment to any Collateral Obligation or (f) any similar functions.

Section 2.03 Shared Employees.

(a) The Staff and Services Provider hereby agrees and consents that each Shared Employee, if any, shall be employed by the Management Company, and the Management Company hereby agrees and consents that each Shared Employee shall be employed by the Staff and Services Provider. Except as may otherwise separately be agreed in writing between the applicable Shared Employee and the Management Company and/or the Staff and Services Provider, in each of their discretion, each Shared Employee is an at-will employee and no guaranteed employment or other employment arrangement is agreed or implied by this Agreement with respect to any Shared Employee, and for avoidance of doubt this Agreement shall not amend, limit, constrain or modify in any way the employment arrangements as between any Shared Employee and the Staff and Services Provider or as between any Shared Employee and the Management Company, it being understood that the Management Company may enter into a short-form employment agreement with any Shared Employee memorializing such Shared Employee's status as an employee of the Management Company. To the extent applicable, the Staff and Services Provider shall ensure that the Management Company has sufficient access to the Shared Employees so that the Shared Employees spend adequate time to provide the services required hereunder. The Staff and Services Provider may also employ the services of persons other than the Specified Persons as it deems fit in its sole discretion

(b) Notwithstanding that the Shared Employees, if any, shall be employed by both the Staff and Services Provider and the Management Company, the Parties acknowledge and agree that any and all salary and benefits of each Shared Employee shall be paid exclusively by the Staff and Services Provider and shall not be paid or borne by the Management Company and no additional amounts in connection therewith shall be due from the Management Company to the Staff and Services Provider.

(c) To the extent that a Shared Employee participates in the rendering of services to the Management Company's clients, the Shared Employee shall be subject to the oversight and control of the Management Company and such services shall be provided by the Shared Employee exclusively in his or her capacity as a "supervised person" of, or "person associated with", the Management Company (as such terms are defined in Sections 202(a)(25) and 202(a)(17), respectively, of the Advisers Act).

(d) Each Party may continue to oversee, supervise and manage the services of each Shared Employee in order to (1) ensure compliance with the Party's compliance policies and procedures, (2) ensure compliance with regulations applicable to the Party and (3) protect the interests of the Party and its clients; *provided* that Staff and Services Provider shall (A) cooperate with the Management Company's supervisory efforts and (B) make periodic reports to the Management Company regarding the adherence of Shared Employees to Applicable Law, including but not limited to the 1940 Act, the Advisers Act and the United States Commodity Exchange Act of 1936, as amended, in performing the services hereunder.

(e) Where a Shared Employee provides services hereunder through both Parties, the Parties shall cooperate to ensure that all such services are performed consistently with Applicable Law and relevant compliance controls and procedures designed to prevent, among other things, breaches in information security or the communication of confidential, proprietary or material non-public information.

(f) The Staff and Services Provider shall ensure that each Shared Employee has any registrations, qualifications and/or licenses necessary to provide the services hereunder.

(g) The Parties will cooperate to ensure that information about the Shared Employees is adequately and appropriately disclosed to clients, investors (and potential investors), investment banks operating as initial purchaser or placement agent with respect to any Client or Account, and regulators, as applicable. To facilitate such disclosure, the Staff and Services Provider agrees to provide, or cause to be provided, to the Management Company such information as is deemed by the Management Company to be necessary or appropriate with respect to the Staff and Services Provider and the Shared Employees (including, but not limited to, biographical information about each Shared Employee).

(h) The Parties shall cooperate to ensure that, when so required, each has adopted a Code of Ethics meeting the requirements of the Advisers Act ("Code of Ethics") that is consistent with applicable law and which is substantially similar to the other Party's Code of Ethics.

(i) The Staff and Services Provider shall make reasonably available for use by the Management Company, including through Shared Employees providing services pursuant to this Agreement, any relevant intellectual property and systems necessary for the provision of the services hereunder.

(j) The Staff and Services Provider shall require that each Shared Employee:

(i) certify that he or she is subject to, and has been provided with, a copy of each Party's Code of Ethics and will make such reports, and seek prior clearance for such actions and activities, as may be required under the Codes of Ethics;

(ii) be subject to the supervision and oversight of each Party's officers and directors, including without limitation its Chief Compliance Officer ("CCO"), which CCO may be the same Person, with respect to the services provided to that Party or its clients;

(iii) provide services hereunder and take actions hereunder only as approved by the Management Company;

(iv) provide any information requested by a Party, as necessary to comply with applicable disclosure or regulatory obligations;

(v) to the extent authorized to transact on behalf of the Management Company or a Client or Account, take reasonable steps to ensure that any such transaction is consistent with any policies and procedures that may be established by the Parties and all Applicable Asset Criteria and Concentrations; and

(vi) act, at all times, in a manner consistent with the fiduciary duties and standard of care owed by the Management Company to its members and direct or indirect investors or to a Client or Account as well as clients of Staff and Services Provider by seeking to ensure that, among other things, information about any investment advisory or trading activity applicable to a particular client or group of clients is not used to benefit the Shared Employee, any Party or any other client or group of clients in contravention of such fiduciary duties or standard of care.

(k) Unless specifically authorized to do so, or appointed as an officer or authorized person of the Management Company with such authority, no Shared Employee may contract on behalf or in the name of the Management Company, acting as principal.

Section 2.04 Applicable Asset Criteria and Concentrations. The Management Company will promptly inform the Staff and Services Provider in writing of any Applicable Asset Criteria and Concentrations to which it agrees from time to time and the Staff and Services Provider shall take such Applicable Asset Criteria and Concentrations into account when providing assistance and advice in accordance with Section 2.02 above and any other assistance or advice provided in accordance with this Agreement.

Section 2.05 Compliance with Management Company Policies and Procedures. The Management Company will from time to time provide the Staff and Services Provider and the

Shared Employees, if any, with any policy and procedure documentation which it establishes internally and to which it is bound to adhere in conducting its business pursuant to regulation, contract or otherwise. Subject to any other limitations in this Agreement, the Staff and Services Provider will use reasonable efforts to ensure any services it and the Shared Employees provide pursuant to this Agreement complies with or takes account of such internal policies and procedures.

Section 2.06 Authority. The Staff and Services Provider's scope of assistance and advice hereunder is limited to the services specifically provided for in this Agreement. The Staff and Services Provider shall not assume or be deemed to assume any rights or obligations of the Management Company under any other document or agreement to which the Management Company is a party. Notwithstanding any other express or implied provision to the contrary in this Agreement, the activities of the Staff and Services Provider pursuant to this Agreement shall be subject to the overall policies of the Management Company, as notified to the Staff and Services Provider from time to time. The Staff and Services Provider shall not have any duties or obligations to the Management Company unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which the Staff and Services Provider is a party).

Section 2.07 Third Parties.

(a) The Staff and Services Provider may employ third parties, including its affiliates, to render advice, provide assistance and to perform any of its duties under this Agreement; *provided* that notwithstanding the employment of third parties for any such purpose, the Staff and Services Provider shall not be relieved of any of its obligations or liabilities under this Agreement.

(b) In providing services hereunder, the Staff and Services Provider may rely in good faith upon and will incur no liability for relying upon advice of nationally recognized counsel (which may be counsel for the Management Company, a Client or Account or any Affiliate of the foregoing), accountants or other advisers as the Staff and Services Provider determines, in its sole discretion, is reasonably appropriate in connection with the services provided by the Staff and Services Provider under this Agreement.

Section 2.08 Management Company to Cooperate with the Staff and Services Provider. In furtherance of the Staff and Services Provider's obligations under this Agreement the Management Company shall cooperate with, provide to, and fully inform the Staff and Services Provider of, any and all documents and information the Staff and Services Provider reasonably requires to perform its obligations under this Agreement.

Section 2.09 Power of Attorney. If the Management Company considers it necessary for the provision by the Staff and Services Provider of the assistance and advice under this Agreement (after consultation with the Staff and Services Provider), it may appoint the Staff and Services Provider as its true and lawful agent and attorney, with full power and authority in its name to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Staff and Services Provider reasonably deems appropriate or necessary in connection with the execution and settlement of acquisitions of assets as directed by the Management Company

and the Staff and Services Provider's powers and duties hereunder (which for the avoidance of doubt shall in no way involve the discretion and/or authority of the Management Company with respect to investments). Any such power shall be revocable in the sole discretion of the Management Company.

ARTICLE III

CONSIDERATION AND EXPENSES

Section 3.01 Consideration. As compensation for its performance of its obligations as Staff and Services Provider under this Agreement, the Staff and Services Provider will be entitled to receive a flat fee of $168,000 per month (the "Staff and Services Fee"), payable monthly in advance on the first business day of each month.

Section 3.02 Costs and Expenses. Each party shall bear its own expenses; *provided* that the Management Company shall reimburse the Staff and Services Provider for any and all costs and expenses that may be borne properly by the Management Company.

Section 3.03 Deferral. Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any all and amounts payable to the Staff and Services Provider pursuant to this Agreement, including any fees and expenses; *provided* that the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

ARTICLE IV

REPRESENTATIONS AND COVENANTS

Section 4.01 Representations. Each of the Parties hereto represents and warrants that:

(a) It has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(b) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(c) no consent, approval, authorization or order of or declaration or filing with any Governmental Authority is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(d) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (i) its constituting and organizational documents; or (ii) the terms

of any material indenture, contract, lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound.

ARTICLE V

COVENANTS

Section 5.01 Compliance; Advisory Restrictions.

(a) The Staff and Services Provider shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Staff and Services Provider. Specifically, the Staff and Services Provider agrees that it will provide the Management Company with reasonable access to information relating to the performance of Staff and Services Provider's obligations under this Agreement.

(b) This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any portfolio management agreement or any part thereof. It is the express intention of the parties hereto that this Agreement and all services performed hereunder comply in all respects with all (a) applicable contractual provisions and restrictions contained in each portfolio management agreement, investment management agreement or similar agreement and each document contemplated thereby; and (b) Applicable Laws (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the services to be provided under this Agreement shall automatically be limited without action by any person or entity, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

Section 5.02 Records; Confidentiality.

The Staff and Services Provider shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon not less than three (3) Business Days' prior notice; *provided* that the Staff and Services Provider shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

The Staff and Services Provider shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Staff and Services Provider hereunder and shall not disclose any such information to non-affiliated third parties, except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its

rating of notes issued by a CLO or supplying credit estimates on any obligation included in the Portfolio, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity, (iv) as required by (A) Applicable Law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Staff and Services Provider or any of its Affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Staff and Services Provider on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Staff and Services Provider may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any Client or Account, (ix) information relating to performance of the Portfolio as may be used by the Staff and Services Provider in the ordinary course of its business or (xx) such information as is routinely disclosed to the trustee, custodian or collateral administrator of any Client or Account in connection with such trustee's, custodian's or collateral administrator's performance of its obligations under the transaction documents related to such Client or Account. Notwithstanding the foregoing, it is agreed that the Staff and Services Provider may disclose without the consent of any Person (1) that it is serving as staff and services provider to the Management Company, (2) the nature, aggregate principal amount and overall performance of the Portfolio, (3) the amount of earnings on the Portfolio, (4) such other information about the Management Company, the Portfolio and the Clients or Accounts as is customarily disclosed by staff and services providers to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Staff and Services Provider, the Clients or Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

ARTICLE VI

EXCULPATION AND INDEMNIFICATION

Section 6.01 Standard of Care. Except as otherwise expressly provided herein, each Covered Person shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. To the extent not inconsistent with the foregoing, each Covered Person shall follow its customary standards, policies and procedures in performing its duties hereunder. No Covered Person shall deal with the income or assets of the Management Company in such Covered Person's own interest or for its own account. Each Covered Person in its respective sole and absolute discretion may separately engage or invest in any other business ventures, including those that may be in competition with the Management Company, and the Management Company will not have any rights in or to such ventures or the income or profits derived therefrom

Section 6.02 Exculpation. To the fullest extent permitted by law, no Covered Person will be liable to the Management Company, any Member, or any shareholder, partner or member thereof, for (i) any acts or omissions by such Covered Person arising out of or in connection with the conduct of the business of the Management Company or its General Partner, or any investment made or held by the Management Company or its General Partner, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a "Disabling Conduct") on the part of such Covered Person, (ii) any act or omission of any Investor, (iii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of such Covered Person, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of such Covered Person with reasonable care, or (iv) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Management Company or any Member, no Covered Person acting under this Agreement shall be liable to the Management Company or to any such Member for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 6.02 shall exculpate any Covered Person regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to the Management Company or any Member solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to the Management Company or the Members, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to the Management Company or any Member in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

Section 6.03 Indemnification by the Management Company. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated ("Claims"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Management Company or its General Partner, or activities undertaken in connection with the Management Company or its General Partner, or otherwise relating to or

arising out of this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 6.03 regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 6.03 shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 6.03 to the fullest extent permitted by law.

Section 6.04 Other Sources of Recovery etc. The indemnification rights set forth in Section 6.03 are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any of the Clients or Accounts has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained.

Section 6.05 Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 6.03 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

Section 6.06 Reliance. A Covered Person shall incur no liability to the Management Company or any Member in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

ARTICLE VII

TERMINATION

Section 7.01 Termination. Either Party may terminate this Agreement at any time upon at least thirty (30) days' written notice to the other.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments. This Agreement may not be amended or modified except by an instrument in writing signed by each Party.

Section 8.02 Assignment and Delegation.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 8.02, without the prior written consent of the other Party and (ii) in accordance with Applicable Law.

(b) Except as otherwise provided in this Section 8.02, the Staff and Services Provider may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with Applicable Law.

(c) The Staff and Services Provider may, without satisfying any of the conditions of Section 8.02(a) other than clause (ii) thereof, (1) assign any of its rights or obligations under this Agreement to an Affiliate; *provided* that such Affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Staff and Services Provider pursuant to this Agreement and (ii) has the legal right and capacity to act as Staff and Services Provider under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Staff and Services Provider under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Staff and Services Provider in another corporate or similar form and has

substantially the same staff; *provided further* that the Staff and Services Provider shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Staff and Services Provider will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

Section 8.03 Non-Recourse; Non-Petition.

(a) The Staff and Services Provider agrees that the payment of all amounts to which it is entitled pursuant to this Agreement shall be payable by the Management Company only to the extent of assets held in the Portfolio.

(b) Notwithstanding anything to the contrary contained herein, the liability of the Management Company to the Staff and Services Provider hereunder is limited in recourse to the Portfolio, and if the proceeds of the Portfolio following the liquidation thereof are insufficient to meet the obligations of the Management Company hereunder in full, the Management Company shall have no further liability in respect of any such outstanding obligations, and such obligations and all claims of the Staff and Services Provider or any other Person against the Management Company hereunder shall thereupon extinguish and not thereafter revive. The Staff and Services Provider accepts that the obligations of the Management Company hereunder are the corporate obligations of the Management Company and are not the obligations of any employee, member, officer, director or administrator of the Management Company and no action may be taken against any such Person in relation to the obligations of the Management Company hereunder.

(c) Notwithstanding anything to the contrary contained herein, any Staff and Services Provider agrees not to institute against, or join any other Person in instituting against, the Management Company any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under United States federal or state bankruptcy laws, or similar laws until at least one year and one day (or, if longer, the then applicable preference period plus one day) after the payment in full all amounts payable in respect of any Indebtedness incurred to finance any portion of the Portfolio; *provided* that nothing in this provision shall preclude, or be deemed to stop, the Staff and Services Provider from taking any action prior to the expiration of the aforementioned one year and one day period (or, if longer, the applicable preference period then in effect plus one day) in (i) any case or proceeding voluntarily filed or commenced by the Management Company, or (ii) any involuntary insolvency proceeding filed or commenced against the Management Company by a Person other than the Staff and Services Provider.

(d) The Management Company hereby acknowledges and agrees that the Staff and Services Provider's obligations hereunder shall be solely the corporate obligations of the Staff and Services Provider, and are not the obligations of any employee, member, officer, director or administrator of the Staff and Services Provider and no action may be taken against any such Person in relation to the obligations of the Staff and Services Provider hereunder.

(e) The provisions of this Section 8.03 shall survive termination of this Agreement for any reason whatsoever.

Section 8.04 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The Parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) The Parties irrevocably agree for the benefit of each other that the courts of the State of Texas and the United States District Court located in the Northern District of Texas in Dallas are to have exclusive jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with this Agreement and that accordingly any action arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection which they may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in such courts shall be conclusive and binding upon the Parties and may be enforced in the courts of any other jurisdiction.

Section 8.05 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

Section 8.06 Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties.

Section 8.07 No Waiver. The performance of any condition or obligation imposed upon any Party may be waived only upon the written consent of the Parties. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other Party. Any failure by any Party to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

Section 8.08 Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written or electronic 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.

Section 8.09 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any Person, other than the Parties hereto and such permitted assigns, any legal or equitable rights hereunder. For avoidance of doubt, this Agreement is not for the benefit or and is not enforceable by any Shared Employee, Client or Account or any investor (directly or indirectly) in the Management Company.

Section 8.10 No Partnership or Joint Venture. Nothing set forth in this Agreement shall constitute, or be construed to create, an employment relationship, a partnership or a joint venture between the Parties. Except as expressly provided herein or in any other written agreement between the Parties, no Party has any authority, express or implied, to bind or to incur liabilities on behalf of, or in the name of, any other Party.

Section 8.11 Independent Contractor. Notwithstanding anything to the contrary, the Staff and Services Provider shall be deemed to be an independent contractor and, except as expressly provided or authorized herein, shall have no authority to act for or represent the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity in any manner or otherwise be deemed an agent of the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity.

Section 8.12 Written Disclosure Statement. The Management Company acknowledges receipt of Part 2 of the Staff and Services Provider's Form ADV, as required by Rule 204-3 under the Advisers Act, on or before the date of execution of this Agreement.

Section 8.13 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.14 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Parties with respect to such subject matter.

Section 8.15 Notices. Any notice or demand to any Party to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by overnight mail or email transmission or by delivering it by hand as follows:

(a) If to the Management Company:

NexPoint Advisors, L.P.
200 Crescent Court
Suite 700
Dallas, TX 75201

(b) If to the Staff and Services Provider:

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201

or to such other address or email address as shall have been notified to the other Parties.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed as of the date hereof by its duly authorized representative.

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this "***Agreement***") is entered into to be effective as of 8th day of February, 2013 (the "***Effective Date***") by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership ("***HCMFA***"), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 4.01.

"***Applicable Margin***" shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm's length value of the particular service or item allocated.

"***Change***" has the meaning set forth in Section 2.02(a).

"***Change Request***" has the meaning set forth in Section 2.02(b).

"***Code***" means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

"***Effective Date***" has the meaning set forth in the preamble.

"***Governmental Entity***" means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"***Liabilities***" means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

"***Loss***" means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term "***Loss***" will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

"***New Shared Service***" has the meaning set forth in Section 2.03.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

"***Quarterly Report***" has the meaning set forth in Section 5.01.

"***Recipient***" means HCMFA and any of HCMFA's direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

"***Service Provider***" means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

"***Service Standards***" has the meaning set forth in Section 6.01.

"***Shared Assets***" shall have the meaning set forth in Section 3.02.

"***Shared Services***" shall have the meaning set forth in Section 2.01.

"***Subsidiary***" means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

"***Term***" has the meaning set forth in Section 7.01.

ARTICLE II
SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on **Annex A** attached hereto, the "***Shared Services***"), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider's performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a "***Change***"). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a "***Change Request***") and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider's provision or quality of such Shared Service in any material respect or increase Recipient's cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a "***New Shared Service***"). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a "***Shared Service***" for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III
SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the "***Shared IP Rights***") pursuant to third party intellectual property Agreements ("***Third Party IP Agreements***"), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the "***Future Shared Assets***" and collectively with the Shared IP Rights, the "***Shared Assets***").

ARTICLE IV
COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means:

(a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;

(b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and

(c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar qaurter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the "***Quarterly Report***").

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to

Case 19-03540-sgj Doc 1832-1 Filed 01/26/21 Entered 01/26/21 18:31:21 Page 6 of 13

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI
SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the "***Service Standards***"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE VII
TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII
LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: James Dondero
Title: President

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:_____
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance
- General compliance
- Compliance systems

Facilities
- Equipment
- General Overhead
- Office Supplies
- Rent & Parking

Finance & Accounting
- Book keeping
- Cash management
- Cash forecasting
- Credit facility reporting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management

HR
- Drinks/snacks
- Lunches
- Recruiting

IT
- General support & maintenance (OMS, development, support)
- Telecom (cell, phones, broadband)
- WSO

Legal
- Corporate secretarial services
- Document review and preparation
- Litigation support
- Management of outside counsel

Marketing and PR
- Public relations

Tax
- Tax audit support
- Tax planning
- Tax prep and filing

Investments
- Investment research on an ad hoc basis as requested by HCMFA

Valuation Committee

Trading

Trading desk services

Operations

Trade settlement

November 30, 2020

NexPoint Advisors, L.P.
200 Crescent Court, Suite 700
Dallas, Texas 75201

RE: Termination of Amended and Restated Shared Services Agreement, dated January 1, 2018, and among Highland Capital Management, L.P. ("HCMLP"), and NexPoint Advisors, L.P. (the "Agreement").

To Whom It May Concern:

As set forth in Section 7.01 of the Agreement, the Agreement is terminable at will upon at least 30 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective January 31, 2021. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

Dondero Ex. 3

November 30, 2020

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel

RE: Termination of Second Amended and Restated Shared Services Agreement, effective as of February 8, 2013, by and among Highland Capital Management, L.P. ("HCMLP"), and Highland Capital Management Fund Advisors, L.P. (the "Agreement").

To Whom It May Concern:

As set forth in Section 7.02 of the Agreement, the Agreement is terminable at will upon at least 60 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective January 31, 2021. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

Dondero Ex. 4

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)

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com:

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.

Page

Page

Page

Page

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, 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.

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 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

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 equal to the amount of such Allowed Priority Tax Claim, (b) 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. Under section 510 of the Bankruptcy Code, 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 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

[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.

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 Effective 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) 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 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.

[Remainder of Page Intentionally Blank]

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:

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for the Debtor and Debtor-in-Possession

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.

Dondero Ex. 6

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###

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)

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com:

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.

Page

Page

Page

Page

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.

[Remainder of Page Intentionally Blank]

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:

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com

and

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward (TX Bar No. 24044908)
Zachery Z. Annable (TX Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
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

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Maxim B. Litvak (Texas Bar No. 24002482)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel and Proposed Counsel for the Debtor and Debtor-in-Possession

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket No. 281

NOTICE OF FINAL TERM SHEET

TO: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the Northern District of Texas; (c) counsel to the Committee; (d) the Debtor's principal secured parties; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002.

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

Dondero Ex. 7

1934054200114000000000001

PLEASE TAKE NOTICE that on January 9, 2020, the Court held a hearing (the "Hearing") on 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* [Dkt. No. 281] (the "Motion") filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (collectively, the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Case").

PLEASE TAKE FURTHER NOTICE that at the Hearing, the Debtor presented to the Court an amended and modified version of the Term Sheet (as defined in the Motion) and the exhibits thereto (collectively, the "Amended Term Sheet").

PLEASE TAKE FURTHER NOTICE that the Amended Term Sheet is attached hereto as **Exhibit A.**

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Dated: January 14, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
(*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084)
(*admitted pro hac vice*)
Maxim B. Litvak (Texas Bar No. 24002482)
Gregory V. Demo (NY Bar No. 5371992)
(*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pcszjlaw.com
mlitvak@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel and Proposed Counsel for the Debtor and Debtor-in-Possession

EXHIBIT "A"

Highland Capital Management, L.P.

Preliminary Term Sheet

This term sheet ("Term Sheet") outlines the principal terms of a proposed settlement between Highland Capital Management, L.P. (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 case captioned In re Highland Capital Mgm't, L.P, Case No. 19-34054 (SGJ) (the "Chapter 11 Case"), pending in the Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), to resolve a good faith dispute between the parties related to the Debtor's corporate governance, and specifically, the Committee's various objections to certain relief being sought by the Debtors in the Chapter 11 Case [Del. Docket No. 125]. *This Term Sheet shall be subject to approval by the Bankruptcy Court.*

Topic	Proposed Terms
Parties	Highland Capital Management, L.P. (the "Debtor"). The Official Committee of Unsecured Creditors of Highland Capital Management, L.P. (the "Committee").
Independent Directors	The Debtor's general partner, Strand Advisors, Inc., will appoint the following three (3) independent directors (the "Independent Directors"): James Seery, John Dubel, and Judge Russell Nelms. The Independent Directors will be granted exclusive control over the Debtor and its operations. Among other things, the Independent Directors shall conduct a review of all current employees as soon as practicable following the Independent Directors' appointment, determine whether and which employees should be subject to a key employee retention plan and/or key employee incentive plan and, if applicable, propose plan(s) covering such employees. The appointment and powers of the Independent Directors and the corporate governance structure shall be pursuant to the documents attached hereto as **Exhibit A**, which documents shall be satisfactory to the Committee. Once appointed, the Independent Directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the Independent Directors, to object to such removal and replacement). The Independent Directors shall be compensated in a manner to be determined with an understanding that the

	source of funding, whether directly or via reimbursement, will be the Debtor. As soon as practicable after their appointments, the Independent Directors shall, in consultation with the Committee, determine whether an interim Chief Executive Officer (the "CEO") should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as practicable, which may be one of the Independent Directors. Once appointed, the CEO cannot be removed without the Committee's written consent or Order of the Court. The Committee shall have regular, direct access to the Independent Directors, provided, however that (1) if the communications include FTI Consulting Inc. ("FTI"), Development Specialists Inc. ("DSI") shall also participate in such communications; and (2) if the communications include counsel, then either Debtor's counsel or, if retained, counsel to the Independent Directors shall also participate in such communications.
Role of Mr. James Dondero	Upon approval of this Term Sheet by the Bankruptcy Court, Mr. Dondero will (1) resign from his position as a Board of Director of Strand Advisors, Inc., (2) resign as an officer of Strand Advisors, Inc., and (3) resign as President and CEO of the Debtor, and (4) 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 agrees to resign immediately upon such determination. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.
CRO	DSI shall, subject to approval of the Bankruptcy Court, be retained as chief restructuring officer ("CRO") to the

	Debtor and report to and be directed by the Independent Directors and, if and once appointed, the CEO. The retention and scope of duties of DSI shall be pursuant to the Further Amended Retention Agreement, attached hereto as **Exhibit B**. DSI and all other Debtor professionals shall serve at the direction of the CEO, if any, and the Independent Directors.
Estate Claims	The Committee is granted standing to pursue any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing (collectively, the "Estate Claims"); provided, however, that the term Estate Claims will not include any estate claim or cause of action against any then-current employee of the Debtor other than Mr. Dondero.
Document Management, Preservation, and Production	The Debtor shall be subject to and comply with the document management, preservation, and production requirements attached hereto as **Exhibit C**, which requirements cannot be modified without the consent of the Committee or Court order (the "Document Production Protocol"). Solely with respect to the investigation and pursuit of Estate Claims, the document production protocol will acknowledge that the Committee will have access to the privileged documents and communications that are within the Debtor's possession, custody, or control ("Shared Privilege"). With respect to determining if any particular document is subject to the Shared Privilege, the following process shall be followed: (i) the Committee will request documents from the Debtor, (ii) the Debtor shall log all documents requested but withheld on the basis of privilege, (iii) the Debtor shall not withhold documents it understands to be subject to the Shared Privilege; (iv) the Committee will identify each additional document on the log that the Committee believes is subject to the Shared Privilege, and (v) a special master or other third party neutral agreed to by the Committee and the Debtor shall make a determination if such documents are subject to the Shared Privilege. The Committee further agrees that the production of any particular document by

	the Debtor under this process will not be used as a basis for a claim of subject matter waiver.
Reporting Requirements	The Debtor shall be subject to and comply with the reporting requirements attached hereto as **Exhibit D**, which reporting requirements cannot be modified without the consent of the Committee or Court order (the "Reporting Requirements").
Plan Exclusivity	The Independent Directors may elect to waive the Debtor's exclusive right to file a plan under section 1121 of the Bankruptcy Code.
Operating Protocols	The Debtor shall comply with the operating protocols set forth in **Exhibit D** hereto, regarding the Debtor's operation in the ordinary course of business, which protocols cannot be modified without the consent of the Committee or Court order.
Reservation of Rights	This agreement is without prejudice to the Committee's rights to, among other things, seek the appointment of a trustee or examiner at a later date. Nothing herein shall constitute or be construed as a waiver of any right of the Debtor or any other party in interest to contest the appointment of a trustee or examiner, and all such rights are expressly reserved.

Exhibit A

Debtor's Corporate Governance Documents

WRITTEN CONSENT OF SOLE STOCKHOLDER AND DIRECTOR

OF

STRAND ADVISORS, INC.

January 9, 2020

Pursuant to the provisions of the General Corporation Law of the State of Delaware (the "DGCL") and consistent with the provisions of the Certificate of Incorporation (the "Certificate") and Bylaws (the "Bylaws") of Strand Advisors, Inc., a Delaware corporation (the "Company"), the undersigned, being the holder of all of the issued and outstanding shares of common stock, par value $0.01 per share, of the Company and the sole director of the Company (the "Stockholder"), acting by written consent without a meeting pursuant to Section 228 of the DGCL and Article IV, Section 6, and Article XII of the Bylaws, does hereby consent to the adoption of the following resolutions and to the taking of the actions contemplated thereby, in each case with the same force and effect as if presented to and adopted at a meeting of the stockholders:

I. AMENDMENT OF BYLAWS

WHEREAS, it is acknowledged that the Board of Directors of the Company (the "Board") has heretofore been fixed at one (1) and that the Board currently consists of James Dondero;

WHEREAS, pursuant to Article XII of the Bylaws, the Stockholder wishes to amend the Bylaws in the manner set forth on **Appendix A** hereto (the "Bylaws Amendment") to increase the size of the Board from one (1) to three (3) directors, and to add certain provisions respecting director qualifications and the removal of directors; and

NOW, THEREFORE, BE IT RESOLVED, that the Bylaws Amendment is hereby authorized and approved, and the Board is increased from one (1) to three (3) directors;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as may be required to effectuate the Bylaws Amendment; and

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate such Bylaws Amendment is hereby authorized and affirmed.

II. ELECTION OF DIRECTORS

WHEREAS, the Stockholder desires to appoint James Seery, John Dubel, and Russell Nelms to the Board and desires that such individuals constitute the whole Board;

NOW, THEREFORE, BE IT RESOLVED, that James Seery, John Dubel, and Russell Nelms, having consented to act as such, be, and each of them hereby is, appointed as a director, to serve as a director of the Company and to hold such office until such director's respective successor shall have been duly elected or appointed and shall qualify, or until such director's death, resignation or removal;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as

may be required to effectuate the appointment of the foregoing directors, including executing an indemnification agreement in favor of such directors in substantially the form attached hereto as **Appendix B** (each, an "Indemnification Agreement");

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate the appointment of such directors, including the execution of an Indemnification Agreement, is hereby authorized and affirmed.

RESOLVED FURTHER, that James Dondero and any other directors of the Company are hereby removed as directors of the Company;

RESOLVED FURTHER, that the directors appointed pursuant to these resolutions shall, pursuant to the terms of the Bylaws, appoint a Chairman of the Board.

III. STIPULATION WITH THE BANKRUPTCY COURT

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. ("HCMLP") filed for chapter 11 bankruptcy protection in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Bankruptcy Case");

WHEREAS, the Company is the general partner for HCMLP;

WHEREAS, the Bankruptcy Case was transferred to the Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-sgj11 (the "Texas Court") by order of the Bankruptcy Court for the District of Delaware on December 4, 2019;

WHEREAS, the Company and the Stockholder wish to enter into a stipulation (the "Stipulation") with HCMLP and the Official Unsecured Creditors Committee appointed in the Bankruptcy Case (the "Committee"), such Stipulation to be approved by the Texas Court, whereby the Stockholder will agree (a) not to transfer or assign his shares in the Company or exercise the voting power of such shares to remove any member of the Board appointed pursuant to these resolutions or further change the authorized number of directors from three (3) directors; (b) to exercise the voting power of his shares so as to cause each member of the Board appointed by these resolutions to be re-elected upon the expiration of his or her term; (c) upon the death, disability, or resignation of a member of the Board, will exercise the voting power of such shares so as to cause the resulting vacancy to be filled by a successor that is both independent and (i) acceptable to the Stockholder and the Committee or (ii) selected by the remaining members of the Board; and (d) not take any action or exercise the voting power of such shares in any way that is inconsistent with the term sheet agreed to by HCMLP and the Committee and any order of the Texas Court approving such agreement and compromise between HCMLP and the Committee;

WHEREAS, for purposes of the Stipulation, "independent" would exclude the Stockholder, any affiliate of the Stockholder, and any member of management of the Company; and

WHEREAS, it is in the intent of the parties that the Stipulation will no longer be effective or bind the Company or the Stockholder following the termination of the Bankruptcy Case.

NOW, THEREFORE, BE IT RESOLVED, that the Company is authorized to take such actions as may be necessary to enter into and effectuate the Stipulation in the manner and on the terms set forth above, including, but not limited to, further amending the Certificate, Bylaws, or any other corporate governance documents; and

RESOLVED FURTHER, that Scott Ellington, as an officer of the Company, is authorized to take any such actions as may be required to enter into and effectuate the Stipulation in the manner set forth herein; and

RESOLVED FURTHER, that any action taken by Scott Ellington or any other officer of the Company on or prior to the date hereof to effectuate such Stipulation is hereby authorized and affirmed.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned has executed this Written Consent as of the respective date and year first appearing above.

STOCKHOLDER:

_____
James Dondero

[Signature Page to Written Consent of Sole Stockholder of Strand Advisors, Inc.]

First Amendment to Bylaws of
Strand Advisors, Inc.

Strand Advisors, Inc. (the "Company"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that the Company's sole stockholder, acting by written consent without a meeting, resolved to amend the Company's Bylaws (the "Bylaws") as follows:

1. Article III, Section 2, of the Bylaws is hereby deleted in its entirety and replaced with the following:

> Section 2. Number of Directors. The number of directors which shall constitute the whole Board shall be three (3).

2. Article III, Section 5, of the Bylaws is hereby deleted in its entirety and replaced with the following:

> Section 5. Director Qualifications. Each director appointed to serve on the Board shall (A) (i) be an independent director, (ii) not be affiliated with the corporation's stockholders, and (iii) not be an officer of the corporation; and (B) have been (x) nominated by the official committee of unsecured creditors (the "Committee") appointed in the chapter 11 bankruptcy of Highland Capital Management, L.P. (the "Debtor") currently pending in the United States Bankruptcy Court for the Northern District of Texas (the "Court"), Case No. 19-34054-sgj11 and reasonably acceptable to the stockholders; (y) nominated by the stockholders and acceptable to the Committee; or (z) selected by the duly appointed independent directors.

3. The following shall be added as Section 6 to Article III of the Bylaws:

> Section 6. Removal of Directors. Once appointed, the independent directors (i) cannot be removed without the Committee's written consent or Order of the Court, and (ii) may be removed and replaced at the Committee's direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the independent directors, to object to such removal and replacement).

Except as expressly amended hereby, the terms of the Company's Bylaws shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this amendment to be signed this 9th day of January, 2020.

STRAND ADVISORS, INC.

_____
By: Scott Ellington
Its: Secretary

INSERT STRAND ADVISORS, INC. LETTERHEAD

[_____]

[NAME]
[ADDRESS]
[ADDRESS]
[ADDRESS]

Re: Strand Advisors, Inc. – Director Agreement

Dear [_____]:

On behalf of Strand Advisors, Inc. (the "Company"), I am pleased to have you join the Company's Board of Directors. This letter sets forth the terms of the Director Agreement (the "Agreement") that the Company is offering to you.

1. APPOINTMENT TO THE BOARD OF DIRECTORS.

a. Title, Term and Responsibilities.

i. Subject to terms set forth herein, the Company agrees to appoint you to serve as a Director on the Company's Board of Directors (the "Board"), and you hereby accept such appointment the date you sign this Agreement (the "Effective Date"). You will serve as a Director of the Board from the Effective Date until you voluntarily resign, are removed from the Board, or are not re-elected (the "Term"). Your rights, duties and obligations as a Director shall be governed by the Certificate of Incorporation and Bylaws of the Company, each as amended from time to time (collectively, the "Governing Documents"), except that where the Governing Documents conflict with this Agreement, this Agreement shall control.

ii. You acknowledge and understand that the Company is the general partner of Highland Capital Management, L.P. ("HCMLP") and that HCMLP is currently the debtor in possession in a chapter 11 bankruptcy proceeding (the "Bankruptcy") pending in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). Your rights, duties, and obligations may in certain instances require your involvement, either directly or indirectly, in the Bankruptcy and such rights, duties, and obligations may be impacted in whole or in part by the Bankruptcy.

b. Mandatory Board Meeting Attendance. As a Director, you agree to apply all reasonable efforts to attend each regular meeting of the Board. You also agree to devote sufficient time to matters that may arise at the Company from time to time that require your attention as a Director.

c. Independent Contractor. Under this Agreement, your relationship with the Company will be that of an independent contractor as you will not be an employee of the Company nor eligible to participate in regular employee benefit and compensation plans of the Company.

d. Information Provided by the Company. The Company shall: (i) provide you with reasonable access to management and other representatives of the Company and HCMLP; and (ii) furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company and HCMLP that you request in connection with the services to be provided to the Company. You will rely, without further independent verification,

on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by you in connection with the services performed for the Company. The Company acknowledges and agrees that you are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein, provided that if you become aware of material inaccuracies or errors in any such information you shall promptly notify the Board of such errors, inaccuracies or concerns.

2. COMPENSATION AND BENEFITS.

a. Retainer. The Company will pay you a retainer for each month you serve on the Board (the "Retainer") to be paid in monthly installments of (a) $60,000 for each of the first three months, (b) $50,000 for each of the next three months, and (c) $30,000 for each of the following six months. The parties will re-visit the Retainer after the sixth month. The Company's obligation to pay the Retainer will cease upon the termination of the Term.

b. Expense Reimbursement. The Company will reimburse you for all reasonable travel or other expenses, including expenses of counsel, incurred by you in connection with your services hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time.

c. Invoices; Payment.

i. In order to receive the compensation and reimbursement set forth in this Section 2, you are required to send to the Company regular monthly invoices indicating your fees, costs, and expenses incurred. Payment of the Retainer will be due on the first business day of each month regardless of whether an invoice has been provided. Reimbursement of expenses will also occur on the first business day of each month, subject to the Company's receipt of appropriate documentation required by the Company's expenses reimbursement policy.

ii. You further agree that the Company's obligation to pay the compensation and reimbursement set forth in this Section 2 is conditioned in all respects on the entry of a final order in the court overseeing the Bankruptcy that authorizes and requires HCMLP to reimburse the Company for all such payments to you.

d. Indemnification; D&O Insurance. You will receive indemnification as a Director of the Company on the terms set forth in that certain Indemnification Agreement, dated [_____], a copy of which is attached hereto as **Appendix A** (the "Indemnification Agreement"). You will also be provided coverage under the Company's directors' and officers' insurance policy as set forth in the Indemnification Agreement.

e. Tax Indemnification. You acknowledge that the Company will not be responsible for the payment of any federal or state taxes that might be assessed with respect to the Retainer and you agree to be responsible for all such taxes.

3. PROPRIETARY INFORMATION OBLIGATIONS.

a. Proprietary Information. You agree that during the Term and thereafter that you will take all steps reasonably necessary to hold all information of the Company, its affiliates, and related entities, which a reasonable person would believe to be confidential or proprietary information, in trust and confidence, and not disclose any such confidential or proprietary information to any third party without first obtaining the Company's express written consent on a case-by-case basis.

b. Third Party Information. The Company has received and will in the future receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. You agree to hold such Third Party Information in confidence and not to disclose it to anyone (other than Company personnel who need to know such information in connection with their work for Company) or to use, except in connection with your services for Company under this Agreement, Third Party Information unless expressly authorized in writing by the Company.

c. Return of Company Property. Upon the end of the Term or upon the Company's earlier request, you agree to deliver to the Company any and all notes, materials and documents, together with any copies thereof, which contain or disclose any confidential or proprietary information or Third Party Information.

4. OUTSIDE ACTIVITIES.

a. Investments and Interests. Except as permitted by Section 4(b), you agree not to participate in, directly or indirectly, any position or investment known by you to be materially adverse to the Company or any of its affiliates or related entities.

b. Activities. Except with the prior written consent of the Board, you will not during your tenure as a member of the Company's Board undertake or engage in any other directorship, employment or business enterprise in direct competition with the Company or any of its affiliates or related entities, other than ones in which you are a passive investor or other activities in which you were a participant prior to your appointment to the Board as disclosed to the Company.

c. Other Agreements. You agree that you will not disclose to the Company or use on behalf of the Company any confidential information governed by any agreement between you and any third party except in accordance with such agreement.

5. TERMINATION OF DIRECTORSHIP.

a. Voluntary Resignation, Removal Pursuant to Bylaws. You may resign from the Board at any time with or without advance notice, with or without reason. Subject to any orders or agreements entered into in connection with the Bankruptcy, you may be removed from the Board at any time, for any reason, in any manner provided by the Governing Documents and applicable law.

b. Continuation. The provisions of this Agreement that give the parties rights or obligations beyond the termination of this Agreement will survive and continue to bind the parties.

c. Payment of Fees; Reimbursement. Following termination of this Agreement, any undisputed fees and expenses due to you will be remitted promptly following receipt by the Company of any outstanding invoices.

6. GENERAL PROVISIONS.

a. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be invalid, illegal or unenforceable such provision will be reformed, construed and enforced to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

b. Entire Agreement. This Agreement constitutes the entire agreement between you and the Company with respect to your service as a Director and supersedes any prior agreement, promise, representation or statement written between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by the party or parties affected by such modification or amendment.

c. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by you and the Company and our respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your rights or duties hereunder.

d. Governing Law. This Agreement will be governed by the law of the State of Delaware as applied to contracts made and performed entirely within Delaware.

We are all delighted to be able to extend you this offer and look forward to working with you. To indicate your acceptance of the Company's offer, please sign and date this Agreement below.

Sincerely,

STRAND ADVISORS, INC.

By: Scott Ellington
Its: Secretary

[Signature Page Follows]

ACCEPTED AND AGREED:

_____
[NAME]
Date: _____

INDEMNIFICATION AND GUARANTY AGREEMENT

This Indemnification and Guaranty Agreement ("**Agreement**"), dated as of [_____], is by and between STRAND ADVISORS, INC., a Delaware corporation (the "**Company**"), HIGHLAND CAPITAL MANAGEMENT, LP, a Delaware partnership (the "**Debtor**") (solely as to Section 29 hereunder), and [_____] (the "**Indemnitee**").

WHEREAS, the Company is the general partner of the Debtor and, in such capacity, manages the business affairs of the Debtor;

WHEREAS, Indemnitee has agreed to serve as a member of the Company's board of directors (the "**Board**") effective as of the date hereof;

WHEREAS, the Board has determined that enhancing the ability of the Company, on its own behalf and for the benefit of the Debtor, to retain and attract as directors the most capable Persons is in the best interests of the Company and the Debtor and that the Company and the Debtor therefore should seek to assure such Persons that indemnification and insurance coverage is available; and

WHEREAS, in recognition of the need to provide Indemnitee with protection against personal liability, in order to procure Indemnitee's service as a director of the Company, in order to enhance Indemnitee's ability to serve the Company in an effective manner and in order to provide such protection pursuant to express contract rights (intended to be enforceable irrespective of, among other things, any amendment to the Company's Bylaws (as may be amended further from time to time, the "**Bylaws**"), any change in the composition of the Board or any change in control, business combination or similar transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of, and the advancement of Expenses (as defined in Section 1(g) below) to, Indemnitee as set forth in this Agreement and for the coverage of Indemnitee under the Company's directors' and officers' liability or similar insurance policies ("**D&O Insurance**").

NOW, THEREFORE, in consideration of the foregoing and the Indemnitee's agreement to provide services to the Company, the parties (including the Debtor solely as to Section 29 hereunder) agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "**Change in Control**" means the occurrence of any of the following: (i) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions (including any merger or consolidation or whether by operation of law or otherwise), of all or substantially all of the properties or assets of the Company and its subsidiaries, to a third party purchaser (or group of affiliated third party purchasers) or (ii) the consummation of any transaction (including any merger or consolidation or whether by operation of law or otherwise), the result of which is that a third party purchaser (or group of affiliated third party purchasers) becomes the beneficial

owner, directly or indirectly, of more than fifty percent (50%) of the then outstanding Shares or of the surviving entity of any such merger or consolidation.

(b) "**Claim**" means:

(i) any threatened, pending or completed action, suit, claim, demand, arbitration, inquiry, hearing, proceeding or alternative dispute resolution mechanism, or any actual, threatened or completed proceeding, including any and all appeals, in each case, whether brought by or in the right of the Company or otherwise, whether civil, criminal, administrative, arbitrative, investigative or other, whether formal or informal, and whether made pursuant to federal, state, local, foreign or other law, and whether or not commenced prior to the date of this Agreement, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of or relating to either (a) any action or alleged action taken by Indemnitee (or failure or alleged failure to act) or of any action or alleged action (or failure or alleged failure to act) on Indemnitee's part, while acting in his or her Corporate Status or (b) the fact that Indemnitee is or was serving at the request of the Company or any subsidiary of the Company as director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise, in each case, whether or not serving in such capacity at the time any Loss or Expense is paid or incurred for which indemnification or advancement of Expenses can be provided under this Agreement, except one initiated by Indemnitee to enforce his or her rights under this Agreement; or

(ii) any inquiry, hearing or investigation that the Indemnitee determines might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism.

(c) "**Controlled Entity**" means any corporation, limited liability company, partnership, joint venture, trust or other Enterprise, whether or not for profit, that is, directly or indirectly, controlled by the Company. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of an Enterprise, whether through the ownership of voting securities, through other voting rights, by contract or otherwise.

(d) "**Corporate Status**" means the status of a Person who is or was a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of the Company or of any other Enterprise which such Person is or was serving at the request of the Company or any subsidiary of the Company. In addition to any service at the actual request of the Company, Indemnitee will be deemed, for purposes of this Agreement, to be serving or to have served at the request of the Company or any subsidiary of the Company as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise if Indemnitee is or was serving as a director, officer, employee, partner, member, manager, fiduciary, trustee or agent of such Enterprise and (i) such Enterprise is or at the time of such service was a Controlled Entity, (ii) such Enterprise is or at the time of such service was an employee benefit plan (or related trust) sponsored or maintained by the Company or a Controlled Entity or (iii) the Company or a

Controlled Entity, directly or indirectly, caused Indemnitee to be nominated, elected, appointed, designated, employed, engaged or selected to serve in such capacity.

(e) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Claim in respect of which indemnification is sought by Indemnitee. Under no circumstances will James Dondero be considered a Disinterested Director.

(f) "**Enterprise**" means the Company or any subsidiary of the Company or any other corporation, partnership, limited liability company, joint venture, employee benefit plan, trust or other entity or other enterprise of which Indemnitee is or was serving at the request of the Company or any subsidiary of the Company in a Corporate Status.

(g) "**Expenses**" means any and all expenses, fees, including attorneys', witnesses' and experts' fees, disbursements and retainers, court costs, transcript costs, travel expenses, duplicating, printing and binding costs, telephone charges, postage, fax transmission charges, secretarial services, delivery services fees, and all other fees, costs, disbursements and expenses paid or incurred in connection with investigating, defending, prosecuting, being a witness in or participating in (including on appeal), or preparing to defend, prosecute, be a witness or participate in, any Claim. Expenses also shall include (i) Expenses paid or incurred in connection with any appeal resulting from any Claim, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 4 only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute thereto, and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder.

(i) "**Expense Advance**" means any payment of Expenses advanced to Indemnitee by the Company pursuant to Section 4 or Section 5 hereof.

(j) "**Indemnifiable Event**" means any event or occurrence, whether occurring before, on or after the date of this Agreement, related to the fact that Indemnitee is or was a manager, director, officer, employee or agent of the Company or any subsidiary of the Company, or is or was serving at the request of the Company or any subsidiary of the Company as a manager, director, officer, employee, member, manager, trustee or agent of any other Enterprise or by reason of an action or inaction by Indemnitee in any such capacity (whether or not serving in such capacity at the time any Loss is incurred for which indemnification can be provided under this Agreement).

(k) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently performs, nor in the past three (3) years has performed, services for any of: (i) James Dondero, (ii) the

Company or Indemnitee (other than in connection with matters concerning Indemnitee under this Agreement or of other indemnitees under similar agreements), or (iii) any other party to the Claim giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) "**Losses**" means any and all Expenses, damages, losses, liabilities, judgments, fines (including excise taxes and penalties assessed with respect to employee benefit plans and ERISA excise taxes), penalties (whether civil, criminal or other), amounts paid or payable in settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement and all other charges paid or payable in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in, any Claim.

(m) "**Person**" means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity and includes the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act.

(n) "**Shares**" means an ownership interest of a member in the Company, including each of the common shares of the Company or any other class or series of Shares designated by the Board.

(o) References to "**serving at the request of the Company**" include any service as a director, manager, officer, employee, representative or agent of the Company which imposes duties on, or involves services by, such director, manager, officer, employee or agent, including but not limited to any employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he or she reasonably believed to be in and not opposed to the best interests of the Company in Indemnitee's capacity as a director, manager, officer, employee, representative or agent of the Company, including but not limited to acting in the best interest of participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to under applicable law or in this Agreement.

2. Indemnification.

(a) Subject to Section 9 and Section 10 of this Agreement, the Company shall indemnify and hold Indemnitee harmless, to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Losses and Expenses if Indemnitee was or is or becomes a party to or participant in, or is threatened to be made a party to or participant in, any Claim by reason of or arising in part out of an Indemnifiable Event, including, without limitation, Claims

brought by or in the right of the Company, Claims brought by third parties, and Claims in which the Indemnitee is solely a witness.

(b) For the avoidance of doubt, the indemnification rights and obligations contained herein shall also extend to any Claim in which the Indemnitee was or is a party to, was or is threatened to be made a party to or was or is otherwise involved in any capacity in by reason of Indemnitee's Corporate Status as a fiduciary capacity with respect to an employee benefit plan. In connection therewith, if the Indemnitee has acted in good faith and in a manner which appeared to be consistent with the best interests of the participants and beneficiaries of an employee benefit plan and not opposed thereto, the Indemnitee shall be deemed to have acted in a manner not opposed to the best interests of the Company.

3. Contribution.

(a) Whether or not the indemnification provided in Section 2 is available, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any Claim in which the Company is jointly liable with Indemnitee (or would be if joined in such Claim), the Company shall contribute to the amount of Losses paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such Claim arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors, managers or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such Losses, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(b) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors, managers or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(c) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes,

amounts paid or to be paid in settlement and/or for Expenses, in connection with any Claim relating to an Indemnifiable Event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Claim in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Claim; and/or (ii) the relative fault of the Company (and its directors, managers, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Advancement of Expenses. The Company shall, if requested by Indemnitee, advance, to the fullest extent permitted by law, to Indemnitee (an "**Expense Advance**") any and all Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any Claim arising out of an Indemnifiable Event (whether prior to or after its final disposition). Indemnitee's right to such advancement is not subject to the satisfaction of any standard of conduct. Without limiting the generality or effect of the foregoing, within thirty (30) business days after any request by Indemnitee, the Company shall, in accordance with such request, (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. In connection with any request for Expense Advances, Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Execution and delivery to the Company of this Agreement by Indemnitee constitutes an undertaking by the Indemnitee to repay any amounts paid, advanced or reimbursed by the Company pursuant to this Section 4, the final sentence of Section 9(b), or Section 11(b) in respect of Expenses relating to, arising out of or resulting from any Claim in respect of which it shall be determined, pursuant to Section 9, following the final disposition of such Claim, that Indemnitee is not entitled to indemnification hereunder. No other form of undertaking shall be required other than the execution of this Agreement. Each Expense Advance will be unsecured and interest free and will be made by the Company without regard to Indemnitee's ability to repay the Expense Advance.

5. Indemnification for Expenses in Enforcing Rights. To the fullest extent allowable under applicable law, the Company shall also indemnify against, and, if requested by Indemnitee, shall advance to Indemnitee subject to and in accordance with Section 4, any Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any action or proceeding by Indemnitee for (a) indemnification or reimbursement or advance payment of Expenses by the Company under any provision of this Agreement, or under any other agreement or provision of the Bylaws now or hereafter in effect relating to Claims relating to Indemnifiable Events, and/or (b) recovery under any D&O Insurance maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification or insurance recovery, as the case may be. Indemnitee shall be required to reimburse the Company in the event that a final judicial determination is made that such action brought by Indemnitee was frivolous or not made in good faith.

6. Partial Indemnity. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for a portion of any Losses in respect of a Claim

related to an Indemnifiable Event but not for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

7. Notification and Defense of Claims.

(a) Notification of Claims. Indemnitee shall notify the Company in writing as soon as reasonably practicable of any Claim which could relate to an Indemnifiable Event or for which Indemnitee could seek Expense Advances, including a brief description (based upon information then available to Indemnitee) of the nature of, and the facts underlying, such Claim, to the extent then known. The failure by Indemnitee to timely notify the Company hereunder shall not relieve the Company from any liability hereunder except to the extent the Company's ability to participate in the defense of such claim was materially and adversely affected by such failure. If at the time of the receipt of such notice, the Company has D&O Insurance or any other insurance in effect under which coverage for Claims related to Indemnifiable Events is potentially available, the Company shall give prompt written notice to the applicable insurers in accordance with the procedures, provisions, and terms set forth in the applicable policies. The Company shall provide to Indemnitee a copy of such notice delivered to the applicable insurers, and copies of all subsequent correspondence between the Company and such insurers regarding the Claim, in each case substantially concurrently with the delivery or receipt thereof by the Company.

(b) Defense of Claims. The Company shall be entitled to participate in the defense of any Claim relating to an Indemnifiable Event at its own expense and, except as otherwise provided below, to the extent the Company so wishes, it may assume the defense thereof with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any such Claim, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently directly incurred by Indemnitee in connection with Indemnitee's defense of such Claim other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its own legal counsel in such Claim, but all Expenses related to such counsel incurred after notice from the Company of its assumption of the defense shall be at Indemnitee's own expense; provided, however, that if (i) Indemnitee's employment of its own legal counsel has been authorized by the Company, (ii) Indemnitee has reasonably determined that there may be a conflict of interest between Indemnitee and the Company in the defense of such Claim, (iii) after a Change in Control, Indemnitee's employment of its own counsel has been approved by the Independent Counsel or (iv) the Company shall not in fact have employed counsel to assume the defense of such Claim, then Indemnitee shall be entitled to retain its own separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any such Claim) and all Expenses related to such separate counsel shall be borne by the Company.

8. Procedure upon Application for Indemnification. In order to obtain indemnification pursuant to this Agreement, Indemnitee shall submit to the Company a written request therefor, including in such request such documentation and information as

is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Claim, provided that documentation and information need not be so provided to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Indemnification shall be made insofar as the Company determines Indemnitee is entitled to indemnification in accordance with Section 9 below.

9. Determination of Right to Indemnification.

(a) Mandatory Indemnification; Indemnification as a Witness.

(i) To the extent that Indemnitee shall have been successful on the merits or otherwise in defense of any Claim relating to an Indemnifiable Event or any portion thereof or in defense of any issue or matter therein, including without limitation dismissal without prejudice, Indemnitee shall be indemnified against all Losses relating to such Claim in accordance with Section 2, and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(ii) To the extent that Indemnitee's involvement in a Claim relating to an Indemnifiable Event is to prepare to serve and serve as a witness, and not as a party, the Indemnitee shall be indemnified against all Losses incurred in connection therewith to the fullest extent allowable by law and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(b) Standard of Conduct. To the extent that the provisions of Section 9(a) are inapplicable to a Claim related to an Indemnifiable Event that shall have been finally disposed of, any determination of whether Indemnitee has satisfied any applicable standard of conduct under Delaware law that is a legally required condition to indemnification of Indemnitee hereunder against Losses relating to such Claim and any determination that Expense Advances must be repaid to the Company (a "**Standard of Conduct Determination**") shall be made as follows:

(i) if no Change in Control has occurred, (A) by a majority vote of the Disinterested Directors, even if less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum or (C) if there are no such Disinterested Directors, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee; and

(ii) if a Change in Control shall have occurred, (A) if the Indemnitee so requests in writing, by a majority vote of the Disinterested Directors, even if less than a quorum of the Board or (B) otherwise, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee.

Subject to Section 4, the Company shall indemnify and hold Indemnitee harmless against and, if requested by Indemnitee, shall reimburse Indemnitee for, or advance to Indemnitee, within thirty (30) business days of such request, any and all Expenses

incurred by Indemnitee in cooperating with the Person or Persons making such Standard of Conduct Determination.

(c) Making the Standard of Conduct Determination. The Company shall use its reasonable best efforts to cause any Standard of Conduct Determination required under Section 9(b) to be made as promptly as practicable. If the Person or Persons designated to make the Standard of Conduct Determination under Section 9(b) shall not have made a determination within ninety (90) days after the later of (A) receipt by the Company of a written request from Indemnitee for indemnification pursuant to Section 8 (the date of such receipt being the "**Notification Date**") and (B) the selection of an Independent Counsel, if such determination is to be made by Independent Counsel, then Indemnitee shall be deemed to have satisfied the applicable standard of conduct; provided that such 90-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the Person or Persons making such determination in good faith requires such additional time to obtain or evaluate information relating thereto. Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of any Claim.

(d) Payment of Indemnification. If, in regard to any Losses:

(i) Indemnitee shall be entitled to indemnification pursuant to Section 9(a);

(ii) no Standard of Conduct Determination is legally required as a condition to indemnification of Indemnitee hereunder; or

(iii) Indemnitee has been determined or deemed pursuant to Section 9(b) or Section 9(c) to have satisfied the Standard of Conduct Determination,

then the Company shall pay to Indemnitee, within thirty (30) business days after the later of (A) the Notification Date or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) is satisfied, an amount equal to such Losses.

(e) Selection of Independent Counsel for Standard of Conduct Determination. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(i), the Independent Counsel shall be selected by the Board and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(ii), the Independent Counsel shall be selected by Indemnitee, and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, Indemnitee or the Company, as applicable, may, within thirty (3) business days after receiving written notice of selection from the other, deliver to the other a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not satisfy the criteria set forth in the definition of "Independent Counsel" in Section 1(k), and the objection shall

set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the Person or firm so selected shall act as Independent Counsel. If such written objection is properly and timely made and substantiated, (i) the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit; and (ii) the non-objecting party may, at its option, select an alternative Independent Counsel and give written notice to the other party advising such other party of the identity of the alternative Independent Counsel so selected, in which case the provisions of the two immediately preceding sentences, the introductory clause of this sentence and numbered clause (i) of this sentence shall apply to such subsequent selection and notice. If applicable, the provisions of clause (ii) of the immediately preceding sentence shall apply to successive alternative selections. If no Independent Counsel that is permitted under the foregoing provisions of this Section 9(e) to make the Standard of Conduct Determination shall have been selected within twenty (20) days after the Company gives its initial notice pursuant to the first sentence of this Section 9(e) or Indemnitee gives its initial notice pursuant to the second sentence of this Section 9(e), as the case may be, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware ("**Delaware Court**") to resolve any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or to appoint as Independent Counsel a Person to be selected by the Court or such other Person as the Court shall designate, and the Person or firm with respect to whom all objections are so resolved or the Person or firm so appointed will act as Independent Counsel. In all events, the Company shall pay all of the reasonable fees and expenses of the Independent Counsel incurred in connection with the Independent Counsel's determination pursuant to Section 9(b).

(f) Presumptions and Defenses.

(i) Indemnitee's Entitlement to Indemnification. In making any Standard of Conduct Determination, the Person or Persons making such determination shall presume that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification, and the Company shall have the burden of proof to overcome that presumption and establish that Indemnitee is not so entitled. Any Standard of Conduct Determination that is adverse to Indemnitee may be challenged by the Indemnitee in the Delaware Court. No determination by the Company (including by its Board or any Independent Counsel) that Indemnitee has not satisfied any applicable standard of conduct may be used as a defense to enforcement by Indemnitee of Indemnitee's rights of indemnification or reimbursement or advance of payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(ii) Reliance as a Safe Harbor. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports

or statements furnished to Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other Person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, manager, officer, agent or employee of the Company (other than Indemnitee) shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(iii) Defense to Indemnification and Burden of Proof. It shall be a defense to any action brought by Indemnitee against the Company to enforce this Agreement (other than an action brought to enforce a claim for Losses incurred in defending against a Claim related to an Indemnifiable Event in advance of its final disposition) that it is not permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. In connection with any such action or any related Standard of Conduct Determination, the burden of proving such a defense or that the Indemnitee did not satisfy the applicable standard of conduct shall be on the Company.

10. Exclusions from Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated to:

(a) indemnify or advance funds to Indemnitee for Losses with respect to proceedings initiated by Indemnitee, including any proceedings against the Company or its managers, officers, employees or other indemnitees and not by way of defense, except:

(i) proceedings referenced in Section 4 above (unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous); or

(ii) where the Company has joined in or the Board has consented to the initiation of such proceedings.

(b) indemnify Indemnitee if a final decision by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law.

(c) indemnify Indemnitee for the disgorgement of profits arising from the purchase or sale by Indemnitee of securities of the Company in violation of Section 16(b) of the Exchange Act, or any similar successor statute.

11. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 9 that Indemnitee is not entitled to indemnification under this Agreement, (ii) an Expense Advance is not timely made pursuant to Section 4, (iii) no determination of entitlement to indemnification is made pursuant to Section 9 within 90 days after receipt by the Company of the request for indemnification, or (iv) payment of indemnification is not made pursuant Section 9(d), Indemnitee shall be entitled to an adjudication in a Delaware Court, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such

indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 11(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that Indemnitee, pursuant to this Section 11, seeks a judicial adjudication or arbitration of his or her rights under, or to recover damages for breach of, this Agreement, any other agreement for indemnification, payment of Expenses in advance or contribution hereunder or to recover under any director, manager, and officer liability insurance policies or any other insurance policies maintained by the Company, the Company will, to the fullest extent permitted by law and subject to Section 4, indemnify and hold harmless Indemnitee against any and all Expenses which are paid or incurred by Indemnitee in connection with such judicial adjudication or arbitration, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, payment of Expenses in advance or contribution or insurance recovery. In addition, if requested by Indemnitee, subject to Section 4 the Company will (within thirty (30) days after receipt by the Company of the written request therefor), pay as an Expense Advance such Expenses, to the fullest extent permitted by law.

(c) In the event that a determination shall have been made pursuant to Section 9 that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 11 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 9.

(d) If a determination shall have been made pursuant to Section 9 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 11, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

12. Settlement of Claims. The Company shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any threatened or pending Claim related to an Indemnifiable Event effected without the Company's prior written consent, which shall not be unreasonably withheld; provided, however, that if a Change in Control has occurred, the Company shall be liable for indemnification of the Indemnitee for amounts paid in settlement if an Independent Counsel (which, for purposes of this Section 12, shall be selected by the Company with the prior consent of the Indemnitee, such consent not to be unreasonably withheld or delayed) has approved the settlement. The Company shall not settle any Claim related to an Indemnifiable Event in any manner that would impose any Losses on the Indemnitee without the Indemnitee's prior written consent.

13. Duration. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a manager of the Company (or is serving at the request of the Company as a director, manager, officer, employee, member, trustee or

agent of another Enterprise) and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Claim relating to an Indemnifiable Event (including any rights of appeal thereto) and (ii) throughout the pendency of any proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret his or her rights under this Agreement, even if, in either case, he or she may have ceased to serve in such capacity at the time of any such Claim or proceeding.

14. Other Indemnitors. The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by certain private equity funds, hedge funds or other investment vehicles or management companies and/or certain of their affiliates and by personal policies (collectively, the "**Other Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Other Indemnitors to advance Expenses or to provide indemnification for the same Expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Other Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Other Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 14.

15. Non-Exclusivity. The rights of Indemnitee hereunder will be in addition to any other rights Indemnitee may have under the Bylaws, the General Corporation Law of the State of Delaware (as may be amended from time to time, the "**DGCL**"), any other contract, in law or in equity, and under the laws of any state, territory, or jurisdiction, or otherwise (collectively, "**Other Indemnity Provisions**"). The Company will not adopt any amendment to its Bylaws the effect of which would be to deny, diminish, encumber or limit Indemnitee's right to indemnification under this Agreement or any Other Indemnity Provision.

16. Liability Insurance. For the duration of Indemnitee's service as a director of the Company, and thereafter for so long as Indemnitee shall be subject to any pending Claim relating to an Indemnifiable Event, the Company shall use best efforts to continue to maintain in effect policies of D&O Insurance providing coverage that is at least substantially comparable in scope and amount to that provided by similarly situated companies. In all policies of D&O Insurance maintained by the Company, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights

and benefits as are provided to the most favorably insured of the Company's directors. Upon request, the Company will provide to Indemnitee copies of all D&O Insurance applications, binders, policies, declarations, endorsements and other related materials.

17. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment to Indemnitee in respect of any Losses to the extent Indemnitee has otherwise received payment under any insurance policy, any Other Indemnity Provisions or otherwise of the amounts otherwise indemnifiable by the Company hereunder.

18. Subrogation. In the event of payment to Indemnitee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee. Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

19. Indemnitee Consent. The Company will not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (a) includes an admission of fault of Indemnitee, any non-monetary remedy imposed on Indemnitee or a Loss for which Indemnitee is not wholly indemnified hereunder or (b) with respect to any Claim with respect to which Indemnitee may be or is made a party or a participant or may be or is otherwise entitled to seek indemnification hereunder, does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Claim, which release will be in form and substance reasonably satisfactory to Indemnitee. Neither the Company nor Indemnitee will unreasonably withhold its consent to any proposed settlement; provided, however, Indemnitee may withhold consent to any settlement that does not provide a full and unconditional release of Indemnitee from all liability in respect of such Claim.

20. Amendments. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume

and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

22. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable or contrary to the DGCL or existing or future applicable law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it valid, enforceable and legal within the requirements of any applicable law, and in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid, unenforceable or illegal provisions.

23. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed, by postage prepaid, certified or registered mail:

(a) if to Indemnitee, to the address set forth on the signature page hereto.

(b) if to the Company, to:

Strand Advisors, Inc.
Attention: Isaac Leventon
Address: 300 Crescent Court, Suite 700
Dallas, Texas 75201
Email: ileventon@highlandcapital.com

Notice of change of address shall be effective only when given in accordance with this Section 23. All notices complying with this Section 23 shall be deemed to have been received on the date of hand delivery or on the third business day after mailing.

24. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (OTHER THAN ITS RULES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY).

25. Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware (or, if such court lacks subject matter jurisdiction, in the Superior Court of the State of Delaware), so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware. Each of the parties hereby irrevocably

consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

26. Enforcement.

(a) Without limiting Section 15, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(b) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of Expenses under this Agreement other than in accordance with this Agreement.

27. Headings and Captions. All headings and captions contained in this Agreement and the table of contents hereto are inserted for convenience only and shall not be deemed a part of this Agreement.

28. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement. Facsimile counterpart signatures to this Agreement shall be binding and enforceable.

29. Guaranty By Debtor. The Debtor guarantees to Indemnitee the performance of the obligations of the Company hereunder (the "**Guaranteed Obligations**"). If the Company does not satisfy any of the Guaranteed Obligations when due, Indemnitee may demand that the Debtor satisfy such obligations and the Debtor shall be required to do so by making payment to, or for the benefit of, Indemnitee. Indemnitee can make any number of demands upon the Debtor and such demands can be made for all or part of the Guaranteed Obligations. This guaranty by the Debtor is for the full amount of the Guaranteed Obligations. The Debtor's obligations under this Agreement are continuing. Even though Indemnitee receives payments from or makes arrangements with the Company or anyone else, the Debtor shall remain liable for the Guaranteed Obligations until satisfied in full. The guaranty hereunder is a guaranty of payment, and not merely of collectability, and may be enforced against the Debtor. The Debtor's liability under this Section 29 is unconditional. It is not affected by anything that might release the Debtor from or limit all or part of its obligations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

STRAND ADVISORS, INC.

By: _____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT, LP (solely as to Section 29 hereunder)

By: _____
Name:
Title:

INDEMNITEE:

_____

Name: [_____]
Address: _____
_____
_____

Email:

Exhibit B

Amended DSI Retention Letter

January ___, 2020

Attn: Independent Directors
Highland Capital Management, LP
300 Crescent Court, Ste. 700
Dallas, TX 75201

Re: Development Specialists, Inc. ("DSI")
Retention and Letter of Engagement

Dear Members of the Board:

Please accept this letter as our firm's formal written agreement (the "Agreement") to provide restructuring support services to Highland Capital Management, L.P. (the "Company"). This Agreement replaces and supersedes in all respects the letter agreement between DSI and the Company, dated October 7, 2019, as amended and revised by the letter agreement dated October 29, 2019. However, all fees and expenses incurred by DSI prior to the date hereof in accordance with such prior letter agreements will be paid by the Company, subject to allowance of such fees and expenses by the U.S. Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). The Agreement will become effective upon execution by duly authorized representatives of the respective parties and approval of the Bankruptcy Court.

Section 1 – Scope of Work

DSI will provide the following services (the "Services") to the Company:

1. Bradley D. Sharp will act as the Company's Chief Restructuring Officer ("CRO") with other DSI personnel to assist Mr. Sharp in carrying out those duties and responsibilities.
2. Subject to the terms of this Agreement, Mr. Sharp will report to the Independent Directors and, if appointed, the Chief Executive Officer of the Company ("CEO") and will comply with the Company's corporate governance requirements.
3. Mr. Sharp will fulfill such duties as directed by the Independent Directors and/or CEO, if any, of the Company with respect to the Company's restructuring and bankruptcy filed on October 16, 2019 (the "Chapter 11 Case"), including implementation and prosecution of the Chapter 11 Case**.**
4. Provide other personnel of DSI ("Additional Personnel") to provide restructuring support services as requested or required to the Company, which may include but are not limited to:
    a. assisting the Company in the preparation of financial disclosures required by the Bankruptcy Code, including the Schedules of Assets and Liabilities, the Statements of Financial Affairs and Monthly Operating Reports;

b. advising and assisting the Company, the Company's legal counsel, and other professionals in responding to third party requests;
c. attending meetings and assisting in communications with parties in interest and their professionals, including the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case;
d. providing litigation advisory services with respect to accounting matters, along with expert witness testimony on case related issues; and
e. rendering such other general business consulting services or other assistance as the Company may deem necessary and which are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this case.

DSI's ability to adequately perform the Services is dependent upon the Company timely providing reliable, accurate, and complete necessary information. The Company agrees that CRO will have (i) access to and the ability to communicate with any employee of the Company or any affiliate of the Company and (ii) access to any information, including documents, relating to the Company or any Company affiliate, including, but not limited to, information concerning collections and disbursements. The Company acknowledges that DSI or CRO are not responsible for independently verifying the veracity, completeness, or accuracy of any information supplied to us by or on behalf of the Company.

DSI will submit its evaluations and analyses pursuant to this Agreement in periodic oral and written reports. Such reports are intended to and shall constitute privileged and confidential information, and shall constitute the Company's property.

Although we do not predict or warrant the outcome of any particular matter or issue, and our fees are not dependent upon such outcomes, we will perform the Services with reasonable care and in a diligent and competent manner.

Section 2 – Rates, Invoicing and Retainer

DSI will be compensated at a rate of $100,000 per month, plus expenses (capped at $10,000 per month), for the services of Bradley D. Sharp as CRO and such DSI personnel (including Fred Caruso) as are required to fulfill Mr. Sharp's responsibilities as CRO; provided that if any single expense exceeds $1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

A number of DSI's personnel have experience in providing restructuring support services and may be utilized as Additional Personnel in this representation. Although others of our staff may also be involved, we have listed below certain of the DSI personnel (along with their corresponding billing rates) who would likely constitute the Additional Personnel. The individuals are:

R. Brian Calvert	$640.00/hr.
Thomas P. Jeremiassen	$575.00/hr.
Eric J. Held	$495.00/hr.
Nicholas R. Troszak	$485.00/hr.
Spencer G. Ferrero	$350.00/hr.
Tom Frey	$325.00/hr.

The above rates are adjusted as of January 1 of each year to reflect advancing experience, capabilities, and seniority of our professionals as well as general economic factors.

We acknowledge receipt of a retainer of $250,000 from the Company. The purpose of the retainer is to secure a portion of our fees and expenses and to retain our status as a non-creditor should such be required for DSI to continue to provide the Services. As such, should a need arise to increase this retainer due to the level of Services DSI is providing or projected to provide, we will send the Company a supplement to this Agreement requesting the necessary increases and discuss with the Company the amount and timing of providing such increase to the retainer.

This retainer will be applied to our final invoice. If the retainer exceeds the amount of our final invoice, we will refund the difference to the Company at that time. In the event that periodic invoices are not paid timely, we will apply the retainer to the amounts owing on such invoices and, if applicable, any related late charges, and we will stop work until the retainer is replenished to the full amount required. If the retainer is not replenished within ten (10) days after the application of the retainer to unpaid balances, we reserve the right to terminate this Agreement in accordance with the provisions of Section 3 of this Agreement.

DSI also will be entitled to reimbursement for its reasonable costs and expenses. Such costs and expenses may include, among others, charges for messenger services, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for international flights will be charged at the business class fare; provided that if any single expense exceeds $1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

This Agreement shall be presented to the Bankruptcy Court for approval and continuation, pursuant to Bankruptcy Code Section 363 and DSI's then-prospective obligations shall be contingent upon such approval.

Section 3 – Termination

Either the Company or DSI may terminate this Agreement for any reason with ten (10) business days' written notice. Notwithstanding anything to the contrary contained herein, the Company

shall be obligated, in accordance with any orders of or procedures established by the Court, to pay and/or reimburse DSI all fees and expenses accrued under this Agreement as of the effective date of the termination.

Section 4 – Relationship of the Parties, Confidentiality

DSI will provide the Services to and for the Company, with select members of DSI assigned to specific roles for the benefit of the Company. These members will remain as DSI employees during the pendency of this case. Specifically, the parties intend that an independent contractor relationship will be created by this Agreement. Employees of DSI are not to be considered employees of the Company and are not entitled to any of the benefits that the Company provides for the Company's employees.

The Company acknowledges that all advice (written or oral) given by DSI to the Company in connection with DSI's engagement is intended solely for the benefit and use of the Company in considering the transaction to which it relates, and that no third party is entitled to rely on any such advice or communication. DSI will in no way be deemed to be providing services for any person not a party to this Agreement.

DSI agrees that all information not publicly available that is received by DSI from the Company in connection with this Agreement or that is developed pursuant to this Agreement, will be treated as confidential and will not be disclosed by DSI, except as required by Court order, or other legal process, or as may be authorized by the Company. DSI shall not be required to defend any action to obtain an order requiring disclosure of such information, but shall instead give prompt notice of any such action to the Company so that it may seek appropriate remedies, including a protective order. The Company shall reimburse DSI for all costs and fees (including reasonable attorney's fees) incurred by DSI relating to responding to (whether by objecting to or complying with) any subpoenas or requests for production of information or documents.

Section 5 – Indemnity

The Company shall name Bradley D. Sharp as its Chief Restructuring Officer and shall indemnify him on the same terms as provided to the Company's other officers and directors under the Company partnership agreement or other governing document and applicable state law. Mr. Sharp shall be included as an insured under any insurance policies or coverage available to officers and directors of the Company.

The Company shall additionally indemnify those persons, and only those persons, serving as executive officers on the same terms as provided to the Company's other officers and directors under the Company's partnership agreement or other governing document and applicable state law, along with insurance coverage under the Company's D&O policies. Any such indemnity shall survive the expiration or termination by either party of this Agreement. Except as provided

in this Section and in Section 4, there shall be no indemnification of DSI, its affiliates or the Additional Personnel.

Each and every one of the personnel employed by DSI who works on this particular project, as well as DSI officers, directors, employees and agents (the "DSI Parties") shall not be liable to the Company, or any party asserting claims on behalf of the Company, except for direct damages found in a final determination (not subject to further appeal) by a court of competent jurisdiction to be the direct result of the bad faith, self-dealing or intentional misconduct or gross negligence of DSI.

Section 6 – Conflicts

DSI has made diligent inquiries to determine whether it or any of its professionals have any connections with the Company, its creditors, or other parties in interest in the Chapter 11 Case. Based on that review, the review of DSI's conflict files and responses to inquiries from DSI's professional staff, neither DSI nor its professionals have any known conflicts with the parties in this case. DSI will separately provide its connections to parties in this case and/or their professionals.

Section 7 – No Audit

The Company acknowledges that it is hiring DSI to assist and advise the Company in business planning and operations. DSI's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of AICPA or other such state and national professional bodies.

Section 8 – Non-Solicitation

The Company agrees not to solicit, recruit or hire any employees or agents of DSI for a period of one year subsequent to the completion and/or termination of this Agreement; provided that the Company shall not be prohibited from (x) making general advertisements for employment not specifically directed at employees of DSI or (y) employees of DSI responding to unsolicited requests for employment.

Section 9 – Survival

The provisions of this Agreement relating to indemnification, the non-solicitation or hiring of DSI employees, and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

Section 10 – Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of law principles.

Section 11 – Entire Agreement, Amendment

This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes and is intended to nullify any other agreements, understandings or representations relating to the subject of this Agreement. This Agreement may not be amended or modified except in a writing signed by the parties.

If you are in agreement with the foregoing terms and conditions please indicate your acceptance by signing an original copy of this Agreement on the signature lines below, then returning one fully-executed Agreement to DSI's office. The Agreement will become effective upon execution by duly authorized representatives of the respective parties.

Very truly yours,

Bradley Sharp
Development Specialists, Inc.

AGREED AND ACKNOWLEDGED:

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

_____
By: _____, Independent Director
Date: _____

Exhibit C

Document Production Protocol

A. Definitions

a. Electronically stored information" or "ESI" shall include all electronic files, documents, data, and information covered under the Federal Rules of Civil Procedure.

B. Preservation of ESI - Generally

a. Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data.

C. Preservation of ESI – Specific Forms

a. For email, Debtor uses Outlook Email on an Exchange server. Veritas Enterprise Vault is used to archive emails. Journaling is and has been in active use since 2007, and all inbound, outbound, and in-system email communications have been preserved and are not at risk of deletion due to normal document retention practices. Out of an abundance of caution, a copy of the latest email back-up, which was performed two months ago, shall be copied and stored at a secured location.
b. The file server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created and stored on a portable hard drive at a secured location.
c. The Sharepoint server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format that maintains all potentially relevant information and stored at a secured location.
d. The Oracle E-Business Suite (EBS) server used by Debtor was backed up one week ago. A copy of this backup shall be created in a format and stored at a secured location.
e. The Advent Geneva accounting system used by Debtor was backed up approximately one week ago. Upon reasonable notice, the Committee may submit search criteria to Debtor to run searches in Advent Geneva. Subject to Debtor's rights to assert objections as provided by Part G herein, Debtor will provide the data resulting from such agreed searches pursuant to Part F herein.
f. The Siepe Database (data warehouse) used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format and stored at a secured location.
g. For the Box account used by Debtor, to the extent routine data retention practices may result in file deletion, they shall be suspended pending further discussion with the Committee concerning the relevance of such data. Users of the Box account who have the ability to delete files shall be notified of the obligation to suspend deletion of any data stored in Box.
h. Bloomberg data is archived for five years. Debtor shall work with Bloomberg client services to preserve a copy of all such archived material, which shall be stored at a secured location, or otherwise extend the backup window in which Bloomberg preserves the data by reasonable time to be agreed by the parties.

i. Files may be saved locally on laptops/work computers used by employees of Debtor. This practice is discouraged, but may result in the creation of relevant ESI on local systems in a manner that will not be replicated elsewhere. Debtor shall therefore cease the deletion of data (*i.e.*, wiping) of any employee-assigned computer hard drives, such as for departing employees. Debtor shall furthermore instruct current employees not to delete files stored locally on their assigned computers.

D. Not Reasonably Accessible Documents

a. Absent an order from the Court upon a showing of good cause, a Party from whom ESI has been requested shall not be required to search for responsive ESI from sources that are not reasonably accessible without undue burden or cost. The following types of data stores are presumed to be inaccessible and are not subject to discovery, and need not be collected or preserved, absent a particularized need for the data as established by the facts and legal issues of the case:
    i. Deleted, slack, fragmented, or other data only accessible by forensics;
    ii. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system; and
    iii. On-line access data such as temporary internet files, history, cache, cookies, and the like.

b. To conduct collections in a focused and efficient manner, the Parties also agree to exclude the following file types from collection: Standard system file extensions including, but not limited to, BIN, CAB, CHK, CLASS, COD, COM, DLL DRV, EXE, INF, INI, JAVA, LIB, LOG, SYS and TMP and other file extensions and directories that likely do not contain user generated content such as files identified by hash value when compared to the National Software Reference Library reference data set (RDS Hash), a sub-project of the National Institute of Standards and Technology ("NIST"), of known traceable system and application files. This process is commonly referred to as "De-NISTing."

E. Collection and Search Methodology

a. Searches for emails in Debtor's custody shall be conducted by DSI on Debtor's Veritas Enterprise Vault storage using an unrestricted account at the earliest opportunity, but in no event later than seven (7) days after the Committee requests ESI from the Debtor. DSI shall use an add-on component called Discovery Assistant, which enables searches based on email properties, such as senders, recipients, and dates. Discovery Assistant also permits text searching of email contents and the contents of electronic file attachments, although not pictures of text (*e.g.*, scanned PDFs). Debtor did not employ employee message or file encryption that would prevent reasonable operation of the Discovery Assistant search capabilities.

b. The results of email searches shall be produced to the Committee pursuant to Part F below, subject to completion of any review for privilege or other purposes contemplated by this Agreement.

c. A snapshot copy of Debtor databases (Oracle, Siepe) shall be created in a format to be specified later by agreement with the Committee per Part (C)(d), (f), above. Prior to any production of responsive data from such a structured database Debtor will first identify the database type and version number, provide the vendor-originated database dictionary, if any, (identifying all tables in the database, their fields, the meaning of those fields, and any interrelation among fields) and any user manuals, or any other documentation describing the structure and/or content of the database, and a list of all reports that can be generated from the database. The list of reports shall be provided in native Excel (.xis or .xlsx) format.
d. The Geneva system is highly proprietary and shall not be collected, but the Committee will be given reasonable access to that system per Part C(e), above.
e. Debtor and Committee will meet and confer to discuss the scope of any necessary searches on the Box account.
f. Debtor file server contents, where requested by the Committee, shall be produced pursuant to Part F below.
g. Debtor shall propose a format for producing Sharepoint data. The Committee agrees that it is not necessary to reproduce the interface used by Debtor in the ordinary course of business for Sharepoint.

F. Format of Documents Produced

a. Non-database ESI shall be produced as black and white Group 4 TIFF files, with a resolution of 300 DPI. Page size shall be 8.5 x 11 inches unless, in the reasonable judgment of the Producing Party, a particular item requires a different page size, and original document orientation shall be maintained (i.e., portrait to portrait and landscape to landscape). A Requesting Party may, in good faith and reasonable judgment, request a color copy of a production document if it is necessary to convey the relevant and responsive information. Such color copies may be produced as single page JPG (JPEG) image files. The Requesting Party will bear the costs for color images.
b. The files shall be accompanied by a metadata load file, in a single standard format to be requested by the Receiving Party prior to any production (e.g., Opticon, Summation DII, or the like) showing the Bates number of each page, the appropriate unitization of the documents, and the entire family range. The Parties agree to meet and confer regarding the requested standard format prior to production.
c. The files shall be accompanied by a .DAT text file including the delimited fields identified in the Metadata List (below). No Party will have any obligation to manually generate information to provide the fields identified in the Metadata List.
d. The Producing Party reserves the right to make hard copy documents available for inspection and copying pursuant to Federal Rule of Civil Procedure 34.
e. In the event that a Party identifies hard copy documents for production, hard copy paper documents shall be scanned and will include, to the extent feasible, the following fields in the .DAT text file: PRODBEG, PRODEND, PAGECOUNT, FULLTEXT, and CUSTODIAN. The Parties agree to share equally in the cost of scanning hard copy documents.

f. For any documents that were scanned from hard copy paper documents, the Parties will produce images of hard copy documents unitized to the extent the original documents appeared to be units in physical form, with attachments following parents, and with information that identifies the holder (or container) structure, to the extent such structure exists and it is reasonable to do so. The Producing Party is not required to OCR (Optical Character Recognition) hard copy documents. If the Receiving Party requests that hard copy documents be OCR'ed, the Receiving Party shall bear the cost of such request, unless the Parties agree to split the cost so that each has an OCR'ed copy of the documents.

g. For ESI that the Producing Party produces in TIFF or JPEG format, the Producing Party shall electronically "burn" a legible, unique Bates number onto each page. The Bates number shall, to the extent reasonably possible: (1) identify the Producing Party; (2) maintain a constant length of nine numeric digits (including 0-padding) across the entire production; (3) contain only alphanumeric characters, no special characters or embedded spaces; and (4) be sequential within a given document. If the Bates number conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.

h. For ESI that the Producing Party produces in TIFF format, if the Producing Party is producing the ESI subject to a claim that it is protected from disclosure under any confidentiality order entered in this matter, the Producing Party shall electronically "burn" the appropriate confidentiality designation onto each page of the document. If the designation conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.

i. The Parties agree to produce e-mail families intact absent a privilege or work product claim, so long as each document contains responsive information; for all documents that contain a responsive, non-privileged attachment, the following fields will be produced (if available) as part of the metadata load file to indicate the parent child or parent/sibling relationship:

    i. Production Bates begin
    ii. Production Bates end
    iii. Production Bates begin attachment
    iv. Production Bates end attachment

    Notwithstanding the aforementioned, all parties acknowledge that Debtor's Veritas Enterprise Vault system does not have the ability to search for the family members of responsive documents, and that Debtor does not have an obligation to manually search for non-responsive family members of otherwise responsive documents.

j. Unless otherwise agreed, all dynamic date and time fields, where such fields are processed to contain a value, and all metadata pertaining to dates and times, will be standardized to Universal Coordinated Time (UTC) or Universal Coordinated Time + 1 (UTC+1) **[TBD]**. The Parties understand and acknowledge that such standardization affects only dynamic fields and metadata values and does not affect, among other things, dates and times that are hard-coded text within a file. Dates and times that are hard-coded text within a file (for example, in an email

thread, dates and times of earlier messages that were converted to body text when subsequently replied to or forwarded; and in any file type, dates and times that are typed as such by users) will be produced as part of the document text in accordance with the provisions herein.

k. Excel spreadsheets shall be produced in native application format, unless redactions are required. The Producing Party will make reasonable efforts to provide a TIFF image of a slip sheet with the Bates number of documents produced natively in its production. The corresponding native file shall be named by using the same Bates number identified on the placeholder TIFF image. Any Excel spreadsheet that requires redaction will be produced in TIFF format only. Certain types of databases are dynamic in nature and may contain information that is irrelevant. These files are sometimes large and would, if rendered to TIFF images completely, produce thousands of pages that would have little utility to a reviewer without the associated database.

l. To the extent information from a structured data repository, such as a database, is requested, responsive information will be produced via a report or export of such data to an appropriate program that is agreeable to the requesting Party. The Parties agree to meet and confer before such data is exported.

G. Production Format Shall Not Alter Authenticity, Admissibility, or Privilege Status

a. No Party shall object that ESI produced pursuant to this Protocol is not authentic by virtue of the ESI having been converted to TIFF. The Parties otherwise reserve all rights regarding their ability to object to the authenticity of documents.

b. Nothing in this Protocol shall be construed to affect in any way the rights of any Party to make any objection as to the production, discoverability, admissibility, or confidentiality of documents and ESI.

c. Nothing in this Protocol shall constitute a waiver by any Party of any claim or privilege or other protection from discovery.

d. Nothing in this Protocol shall be interpreted to in any way limit a Producing Parties right and ability to review documents for responsiveness prior to production.

e. Nothing in the Protocol shall require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity.

Metadata List

File Name	Field Description	Sample Values
BegBates	Bates number for the first page of the document	ABC-0000001
EndBates	Bates number for the last page of the document	ABC-0000002
BegAttach	Bates number for the first page of parent document	ABC-0000001
EndAttach	Bates number for the last page of last attachment	ABC-0000005
Pages	Number of printed pages of the	2

	document	
Global Custodian	Custodian name produced in format: Lastname, Firstname.	Smith, Jane; Taylor, Michael
Confidentiality	Indicates if the document has been designated as "Confidential" or "Highly Confidential" pursuant to the applicable Protective Order	Confidential; Highly Confidential
Redacted	Descriptor for documents that have been redacted: "Yes" for redacted documents; "No" for non-redacted documents	Yes
Email Subject	Subject line of Email or	Text of the subject line
Document Subject	Subject value of documents	Text of the subject line
Date Sent	Date email sent	mm/dd/yyyy
Time Sent	Time email sent	hh:mm:ss AM
Date Last Modified	Date document was last modified	mm/dd/yyyy
Time Last Modified	Time document was last modified	hh:mm:ss AM
Date Created	Date document was first created	mm/dd/yyyy
To	All SMTP address of email recipients, separated by a semi-colon	Larry.murphy@email.com
From	All SMTP address of email author	Bart.cole@email.com
CC	All SMTP address of email "CC" recipients, separated by a semi-colon	Jim.James@gmail.com; bjones@yahoo.com
BCC	All SMTP address of email "BCC" recipients, separated by a semi-colon	mjones@gmail.com
Attach	The file name(s) of the documents attached to emails or embedded in files. Multiple files should be delimited by a semicolon	Filename.doc; filename2.doc
Title	The Title property of a file.	Title
Author	The Author property of a file	John Doe
MessageID	The email message ID	
FILENAME	The original name of the file excluding the path	C:\My Documents\letter.doc
DocType	Email, letter, memo, invoice, etc., if available	
Extension	The file extension	.doc

FileType	The actual file type of the document (Word, Excel, etc.) regardless of the file extension	
HashValue	MD5 Hash value of original file	
FilePath	The directory structure of the original file.	C:\My Documents\ letter.doc
PathToNative	The relative path to a produced native document	C:\VOL001\BATES000000001.xls
PathToText	The relative path to the accompanying text file	C:\VOL001\BATES000000001.txt
Volume	The production number or reference from the production	
Other Custodian	To the extent global deduplication is used, the field indicates the other custodians who also were in possession of the document at the time of collection	

Exhibit D

Reporting Requirements

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.

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

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

[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.

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 <u>does not hold a direct or indirect interest</u>

A. **Covered Entities**: See **<u>Schedule A</u>** hereto. **<u>Schedule A</u>** 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) <u>Stage 1 and Stage 2</u>: ordinary course determined by the CRO.

b) <u>Stage 3</u>: ordinary course determined by the Debtor.

[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.

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, 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 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.

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

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.

[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.

[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.

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.

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 "A"

Dondero Ex. 8

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.

---

[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

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. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	**Re: Docket No. 1439**

DEBTOR'S RESPONSE TO MR. JAMES DONDERO'S MOTION FOR ENTRY OF AN ORDER REQUIRING NOTICE AND HEARING FOR FUTURE ESTATE TRANSACTIONS OCCURRING OUTSIDE THE ORDINARY COURSE OF BUSINESS

[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.

Dondero Ex. 9

The above-captioned debtor and debtor in possession (the "Debtor") hereby submits this response (the "Response") to *James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Docket No. 1439] (the "Motion").[2] In support of the Response, the Debtor respectfully states as follows:

PRELIMINARY STATEMENT

1. Through the Motion, Mr. James Dondero seeks entry of an order requiring the Debtor to obtain court approval before engaging in transactions outside the ordinary course of its business. Essentially, the Motion argues that the Protocols, which were approved by the Court approximately eleven months ago with Mr. Dondero's consent, permit the Debtor to engage in transactions that violate 11 U.S.C. § 363. The Motion reflects a profound misunderstanding of the Protocols and the types of transactions the Bankruptcy Code requires be brought to the Court for approval.

2. Given the Debtor's business as an investment manager, the Debtor proactively sought Court approval at the beginning of the case to define which of the Debtor's day-to-day activities were ordinary course and could be completed without Court oversight. After weeks of negotiations, the Debtor and the Committee agreed on the Protocols, which govern those ordinary course transactions. The Protocols provided the Committee with enhanced notice rights with respect to what would otherwise be ordinary course transactions and which would not require Court approval. The Debtor never intended the Protocols to apply to out of the ordinary course transactions for which separate approval would be required under section 363(b). In fact, the Debtor emphasized this point to the Court at the January 9, 2020, hearing at which the Court

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

approved the Protocols.

3. Regardless, the Motion's real argument is that certain transactions superficially identified in the Motion were outside of the ordinary course of business and required Court approval. The Motion, however, conflates the Debtor's obligation to seek Court approval for out of the ordinary course transactions involving the sale of the *Debtor's assets* with restrictions on the Debtor's ability to exercise its role as an investment manager and to sell assets of the Debtor's managed investment vehicles. There is no restriction on the Debtor fulfilling its role as an investment manager in the Bankruptcy Code.

4. On December 10, 2020, the Court entered the *Order Granting Debtor's Motion for a Temporary Restraining Order against James Dondero*, Adv. Proc. No. 20-03190-sgj [Adv. Docket No. 10] (the "TRO"). The TRO was necessitated by Mr. Dondero's unlawful interference in the Debtor's business operations and threats made by Mr. Dondero to Mr. Seery and the Debtor's employees. Faced with the impending confirmation of the Debtor's Plan and the rejection of Mr. Dondero's alternative plan, Mr. Dondero is again attempting to impede the Debtor's operations and the Debtor's efforts to maximize value. The Court should see through Mr. Dondero's pre-textual arguments for transparency and deny the Motion.[3]

REPLY

I. The Protocols Do Not Authorize Sales Outside of the Ordinary Course

5. In the Motion, Mr. Dondero contends that the Protocols allow the Debtor to sell assets outside of the ordinary course of business without having to satisfy the requirements of the Bankruptcy Code. That contention is false. The Protocols were instituted as part of a global

[3] Mr. Dondero's Motion also seeks relief similar to that sought by Mr. Dondero's two other registered investment advisors (NexPoint Advisors, L.P., and Highland Capital Management Fund Advisors, L.P. (collectively, the "Advisors")) in the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Docket No. 1522] (the "CLO Motion"). In the CLO Motion, the Advisors seek a stay on the Debtor's ability to cause its managed CLOs to sell assets without the Advisors' consent.

settlement with the Committee and were intended to limit the Debtor's ability to transfer assets away from the estate and the reach of the Debtor's creditors. The Protocols were adopted because of the myriad and substantial allegations that the Debtor – then under the control of Mr. Dondero – had engaged in repeated fraudulent and impermissible transfers intended to frustrate creditor recoveries and hide assets. In negotiating the Protocols, the Debtor and the Committee intended the Protocols to apply only to (i) transactions within the "ordinary course of business" (*i.e.*, transactions that the Debtor could have completed without the need to come to this Court) or (ii) transactions occurring at non-Debtor entities that were otherwise arguably outside of this Court's jurisdiction and oversight. The Debtor was clear about this at the hearing approving the Protocols.[4]

6. The Protocols do not apply to transactions "outside of the ordinary course of business" because those transactions would *always* be subject to this Court's jurisdiction and require notice and a hearing. In other words, the Debtor and the Committee did not need to negotiate safeguards with respect to transactions outside the ordinary course. Those safeguards were already imposed by the Bankruptcy Code and have been honored by the Debtor (and the Committee) throughout this case. Further, the Protocols were approved by Mr. Dondero and have not been challenged by any party until now.

7. Again, the Protocols do not allow transactions outside the ordinary course of

[4] *See* Transcript, January 9, 2020 (14:16-25; 15: 1-10):

> The third major aspect of the term sheet, Your Honor, was the agreement on operating protocols, and it really relates to the ground rules for the Debtor's operations going forward and when notice to the Committee is required of certain transactions that would otherwise be in the ordinary course of business.
>
> Importantly, Your Honor, we are not trying to modify the Bankruptcy Code in any way. Any transactions out of the ordinary course of business would still be subject to Your Honor's approval.
>
> However, in this case. . . whether or not something is ordinary is not straightforward in a case such as the Debtor's, given the nature of the Debtor's operations. So we thought it was important to establish ground rules up front, and establishing those ground rules was one of the things we did initially in the case. We had opposition from the Committee, and we've worked through the opposition and ultimately arrived at the operating protocols that are attached to the term sheet.

business in violation of 11 U.S.C. § 363(b), and, for the avoidance of doubt, the Debtor will seek this Court's approval prior to conducting any transaction that would be outside the ordinary course of the Debtor's business.

II. The Debtor Has *Not* Conducted Sales Outside of the Ordinary Course of Business

8. Mr. Dondero also argues, without factual support or specificity, that the Debtor has conducted a number of substantial asset sales outside of the ordinary course of business and that the Debtor's non-debtor subsidiaries have also conducted significant asset sales without complying with the Bankruptcy Code. Both of these arguments fail.

The Asset Sales Mentioned in the Motion Did Not Involve Property of the Estate

9. Mr. Dondero alleges that three sales violated 11 U.S.C. § 363: sales conducted by the Highland Multi Strategy Credit Fund, L.P. ("MSCF"), Highland Restoration Capital Partners, L.P. ("RCP"), and the sale of SSPI Holdings, Inc. ("SSPI").[5] These sales were subject to the Protocols (and consistent with the Protocols, each sale was approved by the Committee); however, they were not subject to 11 U.S.C. § 363(b).

10. Section 363(b) applies to "property of the estate." 11 U.S.C. § 363(b)(1) ("The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, ***property of the estate***. . . .") (emphasis added). In the Motion, Mr. Dondero asserts – without support – that sales of assets owned by subsidiaries of the Debtor must comply with 11 U.S.C. § 363. However, the assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate. *See, e.g., In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D. Tex. 1994) ("As a general rule, property of the estate includes the debtor's stock in a subsidiary but not the assets of the subsidiary."); *see also Parkview-Gem, Inc.*, 516 F.2d 807, 809 (8th Cir. 1975)

[5] In the Motion, Mr. Dondero refers to SSP Holdings generically as a subsidiary of "Trussway." (Motion ¶13). The actual entity that was sold was SSPI.

("Ownership of all of the outstanding stock of a corporation, however, is not the equivalent of ownership of the subsidiary's property or assets. . . Even though the value of the subsidiary's outstanding shares owned by the debtor may be directly affected by the subsidiary's disputes with third parties,' Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate.'") (*citing In re Beck Indus., Inc.*, 479 F.2d 410 (2d Cir. 1973)).

11. Further, while the Debtor has certain control rights over RCP, MSCF, and SSPI, those rights do not make the assets of RCP, MSCF, and SSPI property of the Debtor's estate. *See In re Thomas*, 2020 Bankr. LEXIS 1364 at *31 (Bankr. W.D. Tenn. 2020) (a debtor's membership interest in an LLC, including both its economic rights and governance rights, became property of the estate on the petition date, but the assets of the LLC remain separate and the debtor must manage them consistent with the terms of the operating agreement and applicable law); *In re Cardinal Indus.*, 105 B.R. 834, 849 (Bankr. S.D. Ohio 1989) (a debtor's ownership interests and control rights in non-debtor partnerships were property of the estate; but those rights did not make the assets of the partnership property of the estate or implicate the automatic stay so as to prevent secured creditors of the non-debtor partnerships from foreclosing on properties of the partnerships).

12. None of RCP, MSCF, or SSPI is a wholly-owned subsidiary of the Debtor and each has meaningful third party investors. The assets of those entities – and by extension the interests of the third party investors – are not property of the estate and, therefore, are not subject to 11 U.S.C. § 363(b). The assets of these entities are only subject to this Court's oversight because of the agreement the Debtor reached with the Committee to enter into and be bound by the Protocols.

The Debtor Is Authorized to Sell Assets Pursuant to 11 U.S.C. § 363(c)(1)

13. Further, in the Motion, Mr. Dondero focuses on 11 U.S.C. § 363(b), but ignores 11 U.S.C. § 363(c)(1), which grants the Debtor the authority to operate its business in the ordinary course without notice or hearing. Specifically, section 363(c)(1) provides:

> [i]f the business of the debtor is authorized to be operated under section. . . 1108. . . of this title... the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). As such, a debtor may enter into post-petition transactions, including the sale or lease of its property, if the debtor is authorized to operate its business under section 1108 and such transactions are "in the ordinary course of business."

14. An activity is "ordinary course" if it satisfies both the "horizontal test" and the "vertical test." S*ee, e.g.*, *Denton Cty. Elec. Coop. v. Eldorado Ranch, Ltd. (In re Denton Cty. Elec. Coop.)*, 281 B.R. 876, 882 n.12 (Bankr. N.D. Tex. 2002); *see also In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). The vertical test looks to "whether the transaction subjects a hypothetical creditor to a different economic risk than existed when the creditor originally extended credit." *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013). The horizontal test considers "whether the transaction was of the sort commonly undertaken by companies in the industry." *Id.* As such, even if the MSCF, RCP, and SSPI asset sales mentioned in the Motion were subject to this Court's jurisdiction (and they were not), they are allowed by the Bankruptcy Code because they are within the ordinary course of the Debtor's business.

15. First, the vertical test is satisfied with respect to such sales. As Mr. Dondero knows, the Debtor is an investment manager and its business *is* buying and selling assets on behalf of its managed investment vehicles. As such, any creditor of the Debtor (with the

potential exception of Mr. Dondero) would expect the Debtor to continue buying and selling assets; that is what the Debtor does. The MSCF, RCP, and SSPI sales are thus consistent with the expectations of the Debtor's creditors and the Debtor's obligations to MSCF, RCP, and SSPI.[6] *See Thomas*, 2020 Bankr. LEXIS 1364 at *31. The MSCF, RCP, and SSPI sales are examples of the Debtor selling assets on behalf of a managed investment vehicles and include no different economic risk than existed prepetition. Because the Debtor is engaging in the same conduct post-petition as it did prepetition (which is what debtors-in-possession are intended and expected to do under 11 U.S.C. § 1107 of the Bankruptcy Code), the Debtor's creditors will incur no additional risk. This risk is further mitigated because any such sales will be authorized by the Debtor's new management, not Mr. Dondero.

16. Second, the horizontal test is satisfied. The Debtor, again, is an investment manager. Investment managers manage investment vehicles and by definition, buy and sell assets and distribute the proceeds of those assets to investors. The sales referenced in the Motion are consistent with that business as they are the sales of assets held by managed investment vehicles – some of which are currently in orderly liquidation. Selling assets *is* the Debtor's industry, and the sales referenced in the Motion are the sorts of sales commonly conducted in the industry. The Debtor is thus simply operating post-petition in the same manner it did prepetition, albeit under Court-mandated new management. Consequently, the horizontal test is also satisfied.

17. Regardless, if the Court believes the Debtor should be required to justify its conduct, the Debtor is ready to do so as it has acted, in all instances, in a commercially reasonable manner and in the best interests of the Debtor's estate and the stakeholders of MSCF,

[6] In fact, creditors should support the asset sales and such sales were supported by the Committee. The sales liquidated assets at non-Debtor entities to which the Debtor's creditors had no recourse and the net proceeds of those sales were distributed, in part, to the Debtor, to which the Debtor's creditors have recourse.

RCP, and SSPI.[7]

III. Mr. Dondero Has a *De Minimis* Interest in the Debtor

18. In the Motion, Mr. Dondero asserts he is a "creditor, indirect equity security holder, and party in interest" in the Debtor's bankruptcy. While that claim is ostensibly true, it is tenuous. Mr. Dondero filed five proofs of claim in the Debtor's bankruptcy case. Two of those proofs of claim were withdrawn with prejudice on November 23, 2020 [Docket No. 1460]. The other three are unliquidated, contingent claims, each of which said that Mr. Dondero would "update his claim in the next ninety days." Ninety days has passed since those proofs of claim were filed and yet Mr. Dondero has not updated those claims to assert an actual claim against the Debtor's estate.[8]

19. Mr. Dondero's claim as an "indirect equity security holder" is also a stretch. Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. ("Strand"), the Debtor's general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor's Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero's recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his "indirect" equity interest, the Debtor's

[7] The Dugaboy Investment Trust ("Dugaboy") – Mr. Dondero's family trust and a limited partner in MSCF – filed a proof of claim [Claim No. 177] asserting that the Debtor mismanaged MSCF during the pendency of the bankruptcy by causing MSCF to sell certain of its assets [Docket No. 1154] (the "Dugaboy Claim"). The Debtor believes that the sales discussed in the Dugaboy Claim are the same MSCF sales alluded to in the Motion. The Debtor is currently negotiating a briefing and discovery schedule with respect to the Dugaboy Claim with Mr. Dondero's counsel – which also represents Dugaboy. Consequently, even if the Motion is denied, the Debtor will still be required to account for its conduct with respect to the MSCF sales.

[8] Without knowing the what nature of the "updates" would have been, the Debtor does not concede that any "updates" would have been procedurally proper and reserves the right to object to any proposed amendment to Mr. Dondero's claims.

estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be paid.

20. Consequently, although in a purely technical sense Mr. Dondero may have standing as a "creditor" to object to asset sales, his standing is attenuated and his chances of recovery in this case are speculative. *See In re Kutner*, 3 B.R. 422, 425 (Bankr. N.D. Tex. 1980) (finding that a party had standing only when it had "pecuniary interest. . . directly affected by the bankruptcy proceeding"); *see also In re Flintkote Co.* 486 B.R. 99, 114-15 (Bankr. D. Del. 2012), *aff'd.* 526 B.R. 515 (D. Del. 2014) (a claim that is speculative cannot confer party in interest standing).

21. Mr. Dondero's minimal interest in the estate should not allow him to control the disposition of assets in the ordinary course of the Debtor's business, especially when those asset sales have the blessing of the Debtor's *actual* creditors and constituents. As the court said in *In re Lionel* (a case cited by Mr. Dondero), "a bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, [the judge] should consider all salient factors. . . and . . . act to further the diverse interests of the debtor, creditors and equity holders, alike." 722 F.2d 1063, 1071 (2d Cir. 1983). Mr. Dondero's attempt to re-assert his lost control over the Debtor should be rejected and the Motion should be denied.

[Remainder of Page Intentionally Blank]

WHEREFORE, for the reasons set forth above, the Debtor respectfully requests that the Court deny the Motion.

Dated: December 11, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

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**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S RESPONSE IN OPPOSITION TO
DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION

James D. Dondero ("Defendant" or "Mr. Dondero"), the defendant in the above-captioned adversary proceeding, hereby files *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* in opposition to *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr.*

Dondero Ex. 10

James Dondero [Docket Nos. 2 and 6] (the "Motion"). In support thereof, Defendant respectfully represents as follows:

1. Mr. Dondero regrets his communications with Mr. Seery and others that precipitated the Court's entry of the TRO. While Dondero understands why the TRO was entered, he believes that the scope of the proposed preliminary injunction is too broad and nonspecific and deprives him and potentially other non-parties of various legal and due process rights. Accordingly, Mr. Dondero respectfully requests that, if the Court is inclined to grant the Debtor's Motion, it narrow the scope of the injunction to preserve these rights, strike certain non-specific provisions from the order, and remove the provisions that purport to restrain the acts of third parties.

2. First, the scope of the proposed injunction restricting Mr. Dondero's communication with the Debtor's employees is too broad and impairs Mr. Dondero's freedom of speech under the First Amendment to the U.S. Constitution. The Supreme Court has directed judges to scrutinize injunctions restricting speech carefully and ensure that they are "no broader than necessary to achieve [their] desired goals. *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 764-65, 114 S. Ct. 2516 (1994). Here, the scope of this provision of the injunction is too broad because it restricts all communications, of any kind, and of any nature, between Mr. Dondero and anyone employed by the Debtor. Accordingly, the injunction should, at minimum, be narrowed to allow Mr. Dondero to (i) communicate with Debtor's employees on personal or other routine matters unrelated to the Debtor's business or the bankruptcy case; (ii) communicate with employees of the Debtor who also serve in other capacities for Mr. Dondero, such as his personal assistants; and, for the avoidance of doubt, to (iii) communicate with employees of the Debtor once their employment with the Debtor ceases. *See Carroll v. President & Comm'rs of Princess Anne*,

393 U.S. 175, 183 (1968) ("An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted.").

3. Second, the provision of the proposed injunction that prohibits Mr. Dondero from "interfering with or otherwise impeding, directly or indirectly, with the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan" is too broad and potentially restricts Mr. Dondero's ability to exercise his legal rights in this case, including (i) his pursuit of an alternative plan that would see the Debtor survive as a going concern, rather than the liquidation proposed under the Debtor's Fifth Amended Plan; (ii) his communications with creditors and others regarding the terms of the Pot Plan; and (iii) the pursuit of any other legal rights he may have, whether in this Court or outside of it. The Debtor has been fully aware of Mr. Dondero's efforts to promote the Pot Plan and has repeatedly encouraged those efforts. Accordingly, the terms of any injunction should make clear that Mr. Dondero is not barred from attempting to pursue his Pot Plan or in preventing confirmation of the Debtor's Fifth Amended Plan, including communicating with others about doing so provided he does not offer consideration for doing so.

4. Third, the provision of the proposed injunction that enjoins and restrains Mr. Dondero from "causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in the Prohibited Conduct" is likewise too broad, nonspecific, vague, and may, or purport to, enjoin unidentified third parties that are not a party to this proceeding and have complex rights and interests independent from Mr. Dondero. It would be overly simplistic and a violation of due process to lump in potentially any entity in which Mr. Dondero has an ownership or management

interest without giving those separate legal entities an opportunity to respond and be heard on this Motion. Because these entities are not a party to this suit and the Debtor's proposed injunction does not specifically identify any entities besides Dondero, fair notice has not been provided and the Court should make clear that any injunctive restrictions apply only to Dondero in his personal capacity and do not purport to bind the actions of an alleged unnamed multitude of separate legal entities.

5. The general rule is that an injunction "is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Fed. R. Civ. P. 65(d). However, active concert applies "only for assisting the enjoined party in violating the injunction," and not "from engaging in independent conduct." *See Additive Controls & Measurement Sys. v. Flowdata, Inc.*, 96 F.3d 1390, 1394 (Fed. Cir. 1996) ("courts may not grant an injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law"). While having a relationship to an enjoined party may expose that party to liability if it *assists* an enjoined party *in that party's* violation of an injunction, the non-party itself may not be subject to the injunction in its separate capacity, and its independent conduct cannot be restricted. *See id.* ("because they were not parties . . . [they] could not be enjoined from engaging in independent conduct with respect to the subject matter of that suit").

6. Further, it is not clear that the public interest is served by the entry of the broad injunction proposed by the Debtor. While the Debtor states public interest favors entry of the injunction because it may "facilitate reorganizations" and "preserve going-concern values of business" and "protect[] jobs," that is the exact opposite of what the Debtor's Plan proposes. Mr.

Dondero, on the other hand, is seeking to preserve the value of Debtor's assets, its going concern value, and the jobs of the Debtor's employees. The broad injunction sought by the Debtor may impair Mr. Dondero's ability to do just that by preventing him from (i) advocating for his Pot Plan; (ii) negotiating with creditors and other parties in interest concerning the terms of the Plan and the potential resolution of their claims against the estate; and (iii) otherwise pursuing his legal rights, whether in this Court or outside of it. While a footnote to the TRO states that Dondero shall not be prevented from seeking judicial relief before the Court or filing an objection to any motion, this limited carve out is far too narrow and does not protect Mr. Dondero's legitimate due process and legal rights in this case or his ability to engage in settlement negotiations and discussions with other parties in this case. By way of example, the Debtor has used this proceeding as a pretext to conduct discovery into the legitimate settlement communications exchanged between Mr. Dondero and Andrew Clubok, UBS's attorney, concerning the terms of a Pot Plan that are wholly irrelevant to the relief requested in this proceeding. The Debtor should not be allowed to use this proceeding to conduct broad (and irrelevant) discovery concerning Mr. Dondero's efforts to develop a plan different from that proposed by the Debtor.

7. In addition, while Mr. Dondero is bound to respect the automatic stay, the provision of the requested injunction that seeks to prevent Mr. Dondero from "violating section 362(a) of the Bankruptcy Code" is nonspecific, lacking in detail, and too vague as to be enforceable. There are no specific prohibited actions listed, and it is unclear what actions the Debtor may assert violate the automatic stay. Therefore, this provision of the injunction does not describe in reasonable detail the acts restrained and, in explicit violation of Rule 65(d), makes reference to an outside source.[1]

[1] *See* Fed. R. Civ. P. 65(d) ("Every order granting an injunction and every restraining order must . . . describe in reasonable detail—and **not by referring to the complaint or other document**—the act or acts restrained or required.") (emphasis added).

Accordingly, in the event the Court enters an order granting the Motion and allowing the injunction, it should strike this provision from the order.

8. Finally, in the event the Court is inclined to grant the Motion, it should set a definitive termination date of the injunction so fair notice of length and scope of the injunction is provided.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court deny the Motion or, in the event the Court is inclined to grant the Motion, narrow the scope of the proposed injunction as requested herein, and grant Defendant such other and further relief to which he may be justly entitled.

Dated: January 7, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: michael.lynn@bondsellis.com
Email: john@bondsellis.com
Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 7, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink
Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

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**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

JAMES DONDERO'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR AN ORDER REQUIRING MR. JAMES DONDERO TO SHOW CAUSE

James D. Dondero ("Defendant" or "Dondero"), the defendant in the above-captioned adversary proceeding, hereby files this Objection and Response to *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* [Adv. Dkt. 48]. In support thereof, Defendant respectfully represents as follows:

Table of Contents

Table of Authorities

Cases

Statutes

Rules

I. PRELIMINARY STATEMENT

1. The Contempt Motion[1] has little to do with a legitimate violation of a court order and resulting damages to the Debtor. The Debtor well knows that the majority of actions complained of in the Contempt Motion do not violate a clear and specific provision of the TRO. Yet, it has brought the motion to further impugn Dondero's reputation before this Court, prevent Dondero and his related entities from being able to exercise and pursue their legal rights and remedies related to this case or their relationship with the Debtor or its business, and to attempt to gain an undue advantage in potential future disputes between the parties. The evidence will show—contrary to the Debtor's bluster and inuendo at prior hearings—that Dondero substantially complied with the TRO and did not violate any clear and specific provision of the TRO. Accordingly, the Contempt Motion should be denied.

2. The grounds underlying the Contempt Motion evidence the concern that Dondero expressed to the Court during both the TRO and the Preliminary Injunction hearings that the broad and vague TRO (and later the injunction) does not provide clear notice to Dondero of the acts restrained and allows the Debtor to use the threat of contempt as a weapon to enjoin otherwise lawful conduct.

3. As can be seen by the Contempt Motion, the Debtor has done just that. Despite not being explicitly restrained by the TRO, the Debtor is seeking to have Dondero found in contempt for a number of actions that cannot reasonably be interpreted to violate the TRO, including (i) Dondero replacing his cell phone and leaving the old phone at Debtor's office; (ii) going into Debtor's empty office space (which Dondero was arguably entitled to do under the shared services

[1] As used herein, the term Contempt Motion shall refer to *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* [Adv. Dkt. 48] and the supporting brief [Adv. Dkt. 49], collectively.

agreements) to appear for a deposition noticed by the Debtor; (iii) two letters sent by counsel for third-party entities to Debtor's counsel making certain requests, which requests the Debtor rejected and for which no additional action was taken by Dondero or these third parties after the sending of the letters; and (iv) the filing (and eventual prosecution) of a motion brought by third party entities before the TRO was even entered and which action was explicitly allowed under the TRO. The Contempt Motion does not even attempt to describe how these actions violated the TRO. Nor could it. Under its terms, the TRO simply does not apply to these actions. The Debtor will not be able to satisfy its high burden that these actions violated a clear and specific term of the TRO.

4. While Dondero admits that there were certain, extremely limited communications made between him and certain of the Debtor's employees, the evidence will show that all or substantially all of the communications made were allowed and Dondero substantially complied with this provision of the TRO. The limited communications exchanged between Dondero and Debtor employees were either allowed pursuant to the Shared Services Agreements, related to the Pot Plan or other settlement discussions, or were otherwise authorized by the Debtor. Even if certain communications could be found as violating the letter of the TRO, there were no communications made that related to, interfered with, or otherwise impeded the Debtor's business, or that caused harm to the Debtor's business.

5. For these reasons, the Contempt Motion should be denied. The Debtor will not be able to show by clear and convincing evidence that Dondero violated a clear and specific provision of the TRO. To the extent the Court finds that there were any ministerial violations of the TRO, the Court should refrain from holding Dondero in contempt because (i) he substantially complied with the TRO; (ii) any ministerial communications made and not subject to an exception under the TRO did not relate to, interfere with, or otherwise impede the Debtor's business; and (iii) the

Debtor's business suffered no actual damages or harm as a result of such communications or other potential violation of the TRO.

II. ARGUMENT AND AUTHORITIES

6. Bankruptcy courts in the Fifth Circuit have the authority to conduct civil contempt proceedings. *Placid Refining Company v. Terrebonne Fuel and Lube, Inc.,* 108 F.3d 609, 613 (5th Cir. 1997). The test for contempt in the Fifth Circuit requires the showing that (1) a court order was in effect; (2) the order required certain conduct; and (3) the respondent failed to comply with the order. *Piggly Wiggly Clarksville, Inc. v. Mrs. Baird's Bakeries, Inc.,* 177 F.3d 380, 382 (5th Cir. 1999). In civil contempt, the burden of proof is clear and convincing, as opposed to preponderance of evidence. *Petroleos Mexicanos v. Crawford Enterprises, Inc.,* 826 F.2d 392, 401 (5th Cir. 1987). Clear and convincing evidence is "that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *Travelhost, Inc. v. Blandford,* 68 F.3d 958, 961 (5th Cir. 1995). "A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Id.*

7. "A party may avoid a contempt finding where it can show that it has substantially complied with the order, or has made every reasonable effort to comply." *United States Steel Corp. v. United Mine Workers,* 598 F.2d 363, 368 (5th Cir. 1979).

8. "[S]anctions for civil contempt are meant to be wholly remedial and serve to benefit the party who has suffered injury or loss at the hands of the contemnor." *Petroleos Mexicanos,* 826 F.2d at 399. "Compensatory damages awarded as a sanction for violation of a court order are to

"[reimburse] the injured party for the losses and expenses incurred because of his adversary's noncompliance." *Norman Bridge Drug Co. v. Banner,* 529 F.2d 822, 827 (5th Cir.1976).

A. The TRO is not clear and unambiguous.

9. A finding of civil contempt must be supported by clear and convincing evidence that "(1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order." *Ga. Power Co. v. NLRB*, 484 F.3d 1288, 1291 (11th Cir. 2007); *Riccard v. Prudential Life Ins. Co.*, 307 F.3d 1277, 1298 (11th Cir. 2002).

10. Injunctions and Temporary Restraining Orders are required to be definite and specific to be enforceable. Rule 65(d) of the Federal Rules of Civil Procedure provides that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." The specificity requirement "ensures that a party who is restrained by a preliminary injunction knows clearly what conduct is being restrained and why." *MillerCoors LLC v. Anheuser-Busch Cos., LLC*, 940 F.3d 922, 924 (7th Cir. 2019).

11. The specificity provisions of Rule 65(d) are not 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." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam). Accordingly, an injunction "cannot be so general as to leave the party open to the hazard of conducting business in the mistaken belief that it is not prohibited by the injunction and thus make him vulnerable to prosecution for contempt." *Williams v. United States*, 402 F.2d 47, 48 (10th Cir. 1967).

12. As the Supreme Court has stated,

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.

Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n, 389 U.S. 64, 76 (1967).

13. Two principles must be established to show a civil violation of a court order. "The first of these is that it must be proved that the alleged contemnor had knowledge of the order which he is said to have violated. The corollary of this proposition is that the order which is said to have been violated must be specific and definite."[2]

14. As to the latter issue, "[a]n order may be so vague or indefinite that, even though the alleged contemnor is chargeable with knowledge of such order, he cannot be punished for doing what he did in view of lack of certainty as to what it prohibited or directed." *Id.* In addition, it is a "long-standing, salutary rule in contempt cases [] that ambiguities and omissions in orders redound to the benefit of the person charged with contempt." *Id.*

15. As described in detail below, several provisions of the TRO (and later the Preliminary Injunction) are too broad, vague, nonspecific, and ambiguous as to be enforceable. Given the lack of specificity and ambiguous nature of the order, the Court should err on the side of caution, resolve the ambiguities in Dondero's favor, and deny the Contempt Motion

16. First, the provision of the TRO that prohibits Dondero from "interfering with or otherwise impeding, directly or indirectly, with the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan" is not clear, definite, and specific because it does not list specific acts that are to be restrained. Rather,

[2] *Eavenson v. Holtzman*, 775 F.2d 535, 544 (3d Cir. 1985).

it lists a broad, vaguely-worded category of conduct that could be read to apply to any number of unidentified actions related to this bankruptcy case or Debtor's business. Interpreted broadly, this provision could be read to prevent any action of Dondero or his related entities to assert their individual legal rights in this case or to protect their individual business interests. This provision could also be read to restrict any action that is in disagreement with a decision of the Debtor, such as whether claims are properly treated or classified ("treatment of claims"), whether the Debtor's Plan complies with applicable law ("pursuit of the Plan"), whether Dondero can disagree with any sale of assets owned or controlled by the Debtor ("disposition of assets owned or controlled by the Debtor"), and whether Dondero could attempt to pursue his own alternative plan ("alternative to the Plan"). Further, it is not clear how Dondero, as a former employee of the Debtor, can "interfere" with the "Debtor's decisions" given that he has no standing, decision-making authority, or ability to control the Debtor or its independent decisions, rather than simply to disagree with them or assert his own legal positions that may be adverse to the Debtor.

17. This is similar to a broad and sweeping injunction that broadly attempts to enjoin any "interference" with the administration of the Debtor's estate or the Debtor's business, which courts in other circumstances have held is not specific enough to be enforceable. *See, e.g.*, *Robinson v. Rothwell (In re Robinson)*, 342 Fed. Appx. 235, 2009 U.S. App. LEXIS 19040 (8th Cir. 2009) (reversing contempt finding resulting from provision in order preventing "any actions to interfere in any way with administration of these jointly administered bankruptcies," because bankruptcy court's order was neither sufficiently specific to be enforceable, nor clear and unambiguous).

18. Here, the restrictions in the TRO are similar in that the TRO contains the broad phrase "interfering with or otherwise impeding, directly or indirectly, the Debtor's business"

which is just as non-specific, unclear and ambiguous as the phrase from the case above. Further, it appears the intent of this provision is at least partially to prevent Dondero from supposedly "interfering" with the bankruptcy case as the Debtor then lists a series of general duties of a debtor in possession as being included within this broad and amorphous category of interference. The "treatment of claims," for example, has nothing to do with how the Debtor's business operates. It instead appears the intent of this provision is also to enjoin Dondero and his related entities (and their attorneys) from exercising their legal rights and asserting legal positions that the Debtor simply disagrees with. Accordingly, these alleged restrictions are likewise non-specific, vague, and ambiguous because no specific actions are identified as being restricted. It remains unclear what actions Dondero can or cannot do related to this bankruptcy case or the Debtor's business.

19. The ambiguity of the TRO is further evidenced by the fact that the Debtor has asserted that attorneys for the Funds and Advisors[3] may not send letters to the Debtor asserting certain legal positions and making certain requests because such actions "interfere" with the Debtor's business, even if no further action was taken after the letters were sent. While the TRO does not say that counsel for certain of Dondero-related entities are prohibited from sending letters to Debtor's counsel to make requests, the Debtor has asserted that these entities sending such letters caused Dondero to violate the TRO as falling under this broad category of "direct or indirect" interference with Debtor's business.[4] Plainly put, if legal requests made by third parties through their counsel can cause Dondero to violate the TRO, neither Dondero nor his related entities have fair notice of the acts allegedly restrained by the TRO.

20. By way of example, this is probably why the TRO entered against the Funds and

[3] As used herein, "Funds and Advisors" shall mean and refer to Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.

[4] *See* Debtor's Brief in Support of Motion for Order to Show Cause, Adv. Dkt. 49.

Advisors is more specific as to the acts restrained and includes a restriction on the Funds and Advisors "seeking to terminate the portfolio management agreements and/or servicing agreements between the Debtor and the CLOs." The TRO entered against Dondero, however, contains no such restriction. The sending of letters by these attorneys for third parties does not violate the TRO entered against Dondero.

21. In addition, while Dondero is bound to respect the automatic stay, the provision of the TRO (and later the injunction) that prevents Dondero from "violating section 362(a) of the Bankruptcy Code" is nonspecific, lacking in detail, and too vague as to be enforceable. There are no specific prohibited actions listed, and it is unclear what actions the Debtor may assert violate the automatic stay, particularly as to sections 362(a)(1)-(5) (preventing actions against the Debtor and property of the Debtor's estate). This lack of specificity is material and significant because the Debtor has apparently taken the position (or may later take the position) in this adversary proceeding that any action taken by Dondero or his related entities that *may* impact the property of non-Debtor subsidiaries may violate the automatic stay, despite asserting elsewhere in this bankruptcy case that the property held by these subsidiaries is not property of the estate or subject to the Bankruptcy Court's jurisdiction or oversight.[5][6] Therefore, this provision of the TRO does not describe in reasonable detail the acts restrained and, in explicit violation of Rule 65(d), makes reference to an outside source.

22. In sum, the TRO on its face lacks specificity and is unclear and unambiguous. The

[5] *See Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Docket No. 1546], Para. 5 ("[T]he assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate." and "transactions occurring at non-Debtor entities . . . were otherwise arguably outside of this Court's jurisdiction and oversight.') (emphasis in original).

[6] *Id.* at para. 10 ("Even though the value of the subsidiary's outstanding shares owned by the debtor may be directly affected by the subsidiary's disputes with third parties, Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate.") (citing *Parkview-Gem, Inc.*, 516 F.2d 807, 809 (8th Cir. 1975)) (internal citations and quotations omitted).

Debtor's actions indicate that it has interpreted the TRO so broadly as to make it impossible for Dondero to know what actions he can or cannot take. The Preliminary Injunction is substantially similar to the TRO and identical in the particular areas of concern presented to the Court here. Given how the Debtor has moved for contempt based on the non-specific, broad, and unclear provisions of the TRO, there is an imminent danger that the Debtor will broadly interpret the terms of the Preliminary Injunction the same way, all without fair notice to Dondero. The Court should not hold Dondero in contempt based on an unclear, broad, and non-specific order that can be so broadly interpreted.

B. Even if the TRO is clear and unambiguous, the vast majority of actions alleged by the Debtor do not violate the TRO.

23. Even if the TRO is clear and unambiguous, the vast majority of actions the Debtor alleges violate the TRO do not do so under any fair reading. Further, the Contempt Motion fails to state a plausible claim for relief for nearly all actions it alleges violated the TRO. Accordingly, the Contempt Motion should be denied.

24. As described in detail below, despite not being explicitly or even implicitly restrained by the TRO, the Debtor is seeking to have Dondero found in contempt for a number of actions that plainly cannot violate the TRO, including (i) Dondero replacing his cell phone and leaving the old phone at Debtor's office; (ii) Dondero going into Debtor's mostly-empty office space (which Dondero was arguably entitled to do under the shared services agreements) to appear for a deposition noticed by the Debtor; (iii) two letters sent by counsel for third-party entities to Debtor's counsel making certain requests, which the Debtor rejected and for which no additional action was taken by Dondero or these third parties after the Debtor denied the requests made in the letters; and (iv) the filing (and eventual prosecution) of a motion brought by third party entities before the TRO was even entered and which action was explicitly allowed under the TRO. The

Contempt Motion does not even attempt to describe how these actions violated the TRO. Nor could it. Under its terms, the TRO simply does not apply to these actions. Accordingly, the Debtor will not be able to satisfy its high evidentiary burden that these actions violated a clear and specific term of the TRO.

25. To the extent that the Court finds that any of these actions are *consistent* with an alleged violation (rather than violate a clear and specific term under clear and convincing evidence), the Court should resolve any ambiguities and omissions in the TRO for Dondero's benefit. *See Doe v. Bush*, 261 F.3d 1037, 1062 (11th Cir. 2001) (reversing contempt finding when there were two reasonable, competing interpretations of order, stating that ambiguities should be construed in favor of the alleged contemnor).

i. Dondero's alleged "trespass" did not violate the TRO because the TRO contained no restriction on his ability to be in the shared office space and the Debtor did not request he vacate the space until December 23, 2020.

26. Dondero's alleged "trespass" of the Debtor's office space was not a violation of the TRO. As the Court is aware, the TRO was entered on December 10, 2020. The Debtor did not request that Dondero cease using his office space until nearly two weeks later, on December 23, 2020. Dondero does not understand how this can be a violation of the TRO, especially when his only reason for entering the office space was to ensure attendance at a deposition requested by the Debtor. Similarly, Dondero, as President and a portfolio manager of NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, LP ("HCMFA"), was entitled to share the Debtor's office space under the shared services agreements between the Debtor NexPoint and HCMFA. Nevertheless, and despite his rights under these shared services agreements, he, after receipt of the Debtor's demand letter, did timely vacate the permanent use of his office space and only returned to attend this deposition. Perhaps that was not the wisest decision, but it did not

violate the TRO, and the Debtor suffered no harm as a result.

ii. The request letters sent by counsel for the Funds and Advisors did not violate the TRO, and no subsequent actions were taken that could have impacted the Debtor's business.

27. The request letters sent by counsel for the Funds and Advisors do not violate a clear and specific provision of the TRO. First, the letters were not sent by Dondero, but by counsel for third parties, the Funds and Advisors, who made an independent decision to send these letters on behalf of their clients. While Dondero is the President of the Advisors, there is no evidence that he is solely in "control" of either the Funds or Advisors, and the evidence shows that the Funds each have an independent board of directors. At any rate, most of this is beside the point because the letters themselves did nothing. They made requests of the Debtor, which the Debtor rejected. Neither the Funds and Advisors, nor Dondero, took any subsequent action on these requests after they were rejected. There is no clear and specific provision of the TRO preventing counsel for the Funds and Advisors from sending request letters related to the CLOs. Even if there were, no subsequent action was taken and the Debtor suffered no harm.

iii. Contrary to the Debtor's assertion, Dondero did not prevent the Debtor from executing any trades.

28. Contrary to the Debtor's assertion, Dondero did not prevent the Debtor from executing certain securities transactions.

29. As Mr. Seery has testified during his deposition, no finalized trades were ultimately prevented from occurring.[7] With respect to the trades of December 22, 2020, at that time the Debtor requested that two non-Debtor employees (Matt Pearson and Joe Sowin), both of whom worked for non-Debtor HCMFA, to settle the trades of AVYA and SKY. These trades were not

[7] *See* Seery Deposition Transcript dated January 20, 2021, p. 55:13-14 ("I don't think we had an agreed trade that didn't close.").

"interfered with," as alleged by the Debtor. Rather, the potential trade was simply delayed (meaning simply the Debtor did not execute the trade in the market at the exact moment requested) because the non-Debtor employees of HCMFA wanted to first independently investigate whether the trade should occur based on concerns raised by their compliance department. The Advisors' Chief Compliance Officer, Jason Post, testified at the Funds and Advisors Preliminary Injunction hearing that Dondero did not instruct or pressure him or HCMFA employees not to book Seery's proposed trades. Rather, Dondero merely requested that HCMFA look at the trades from a compliance perspective.[8] After review of the proposed trades by compliance, compliance made the independent decision not to have HCMFA book the trades because they had not been run through its pre-trade compliance process. As an independent entity with no apparent written agreement with the Debtor requiring it to settle these trades, HCMFA was well within its rights to temporarily not book the trades to investigate whether they satisfied its compliance process.[9] There was no agreed trade that was prevented from occurring,[10] and the Debtor appears to have ultimately sold some or all of these securities a short time later.

iv. The filing and prosecution of the CLO Motion by the Funds and Advisors does not violate the TRO because the Motion was filed before the TRO was entered, the Motion was not filed by Dondero, and the TRO contains a carve out allowing Dondero to "seek judicial relief" with the Court.

30. While it is unclear whether the Debtor is seeking to hold Dondero in contempt for

[8] *See* January 26, 2021 Hearing Transcript, p. 95: 13-15 ("My recollection is I encouraged Compliance to look at those trades") and p. 96: 3-4 ("I never gave instructions not to settle the trades that occurred, but that's a different ball of wax.").

[9] Mr. Seery has testified at his deposition that he is not aware of any written contract or agreement (other than potentially shared services) between the Debtor and HCMFA that would require HCMFA to settle these trades. See January 20, 2021 Seery Deposition Transcript, p. 50: 3-8.

[10] *See* January 26, 2021 Hearing Transcript, p. 96: 3-4 ("I never gave instructions not to settle the trades that occurred, but that's a different ball of wax."); Seery Deposition Transcript, p. 55:13-14 ("I don't think we had an agreed trade that didn't close.").

the filing and prosecution by the Funds and Advisors of the CLO Motion,[11] to the extent Debtor purports to do so it did not violate the TRO and, accordingly, the Debtor should not be granted its attorney fees incurred in connection with the motion as it requests in the Contempt Motion.

31. While Dondero understands that the Court did not find the presentation of the CLO Motion to be persuasive, the motion was filed before the TRO was entered and the TRO, even if it applies to the conduct of the Funds and Advisors, provided a carve-out to allow for "seeking judicial relief upon proper notice." The CLO Motion was a request for relief that was made by the Funds and Advisors upon proper notice. Accordingly, while the Court ultimately denied the motion, the filing and prosecution of the motion by the Funds and Advisors cannot be found to violate the TRO.

32. While the Debtor has presented very limited evidence on the management or ownership structure of the Funds and Advisors, it repeatedly asserts that, because Dondero has ownership or control rights in these entities that these entities do not, and cannot, act independently. But the evidence shows that the Funds have independent boards that meet frequently, have independent counsel, and they make independent decision. The Advisors, while owned by Dondero, are not solely controlled by Dondero. Dondero, of course, has influence with these entities, but they are independent companies that act to protect their independent interests.

33. In any event, to the extent that the filing and prosecution of the CLO Motion by the Funds and Advisors can even be attributed to Dondero, those actions cannot be fairly read to violate a clear and specific provision of the TRO because (i) the motion was filed before the TRO was even entered; and (ii) the filing and prosecution of the CLO Motion fall under the carve out of "seeking judicial relief upon proper notice" as explicitly allowed under the TRO.

[11] *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Docket No. 1522] (the "CLO Motion").

34. In addition, like with the sending of letters by counsel for the Funds and Advisors, there was no harm to the Debtor's business as a result of the filing of the CLO Motion. Mr. Seery has testified that no finalized trades were blocked or stopped as a result of the letters or the CLO Motion[12] and that no contracts were terminated or breached as a result of either action.[13]

35. Because the filing and prosecution of the CLO Motion did not violate the TRO, the Debtor should not be granted any attorney's fees or expenses incurred relating to the CLO Motion. Further, the Debtor should also not be granted its attorney's fees because the motion was filed by a separate entity, not Dondero, and other potential remedies existed against those entities if the Debtor desired to recover its attorney's fees. The Court should not allow the Debtor to sidestep proper procedures by making Dondero pay the Debtor for attorney fees related to a motion he did not file, which was filed before the TRO was even entered, and which was specifically authorized to be filed under the TRO.

v. Dondero's replacement of his cell phone did not violate the TRO because the TRO contained no provision preventing the phone's replacement.

36. Dondero understands that the Court is concerned about the cell phone. And the Debtor certainly made it appear as though Dondero replacing his cell phone was some significant, watershed event. But from Dondero's perspective, it was completely reasonable for him to replace his cell phone. Dondero was no longer an employee of the Debtor as of October 9, 2020—about two months before he replaced his phone. It is worth recalling that, at the time Dondero bought his new cell phone and left his old phone at Highland's offices on December 10th, the Debtor was anticipating terminating all or virtually all employees before December 31, 2020. Given that Dondero was no longer an employee of the Debtor at that time, and the fact that the company in

[12] *See* Seery Deposition Transcript, p. 55:13-14 ("I don't think we had an agreed trade that didn't close.").

[13] *See id.* at p. 62.

its then-present form would no longer exist within a few short weeks, it was not only reasonable but expected that Dondero would replace his phone. This is probably why a week before the end of the year the Debtor sent its December 23, 2020 letter stating that Dondero's cell phone plan would be terminated as of December 31, 2020 and requesting that Dondero return his phone.

37. Dondero, to prepare for the unwinding of the Debtor's business, purchased a new phone in early December before the TRO was entered and, in accordance with historic company practice, left his prior phone with IT to be recycled or disposed of on or around December 10th. [14]

38. At the time Dondero replaced his phone, he had not been sent any preservation notice, litigation hold letter, or any discovery requests in this adversary proceeding or in any other matter related to this bankruptcy case.

39. But whether Dondero followed proper company procedure in replacing the phone is irrelevant to the Contempt Motion because the TRO contains absolutely no restriction on his ability to replace his phone. And without such a clear and definite restriction, he cannot be held in contempt. *See Waste Management of Wash. v Kattler*, 776 F.3d 336, 343 (5th Cir. 2015) (reversing district court's contempt order for party's failure to turn over iPad where no "definite and specific" court order required the same).

40. In sum, at the time Dondero bought his new cell phone and worked to replace his phone, (i) the TRO either had not been entered or Dondero did not yet have knowledge about its entry;[15] (ii) Dondero was not under any litigation hold or similar letter (the Debtor sent the preservation request letter nearly two weeks *later* on December 23rd along with the sole discovery requests served against Dondero in this case); and (iii) no discovery was pending against Dondero

[14] Dondero also testified at his deposition that his phone may have been provided under Shared Services Agreements.

[15] Deposition Transcript of James Dondero, January 5, 2021, p. 71:24-25 – 72:3.

in this adversary proceeding, the bankruptcy case, or in any other adversary proceeding or contested matter. Further, the only discovery that has been sought in this adversary proceeding predominantly asked for documents and communications starting on the date the TRO was entered (December 10, 2020) onward—meaning the replacement of his phone on or around December 10 did not impact his responses to the Debtor's document requests, which Dondero fully and completed complied with. No party in this adversary proceeding or bankruptcy case has requested that Dondero produce documents or communications from before December 10, 2020, with one limited exception under the document requests served by the Debtor in this proceeding on December 23, 2020.[16]

41. It is worth reiterating the point that, except with respect to the Clubok communications requested in this adversary on December 23, 2020, no party has actually asked Dondero to produce any text messages from any time period prior to December 10, 2020. On December 23, 2020, about 2 weeks after Dondero replaced his phone, the Debtor by letter instead demanded that Dondero *turn over* the cell phone to the Debtor and preserve all communications on the phone, presumably so the Debtor could have unfettered access to all communications Dondero made, in any nature, business-related or not, which would likely include a great deal of privileged communications with his attorneys.

42. In fact, it was the Debtor's obligation under the Term Sheet[17] to take "reasonable and proportional" steps to preserve discoverable information, including by "notifying employees

[16] The document requests propounded by the Debtor in this adversary proceeding on December 23 asked for documents and communications starting on December 10 with the exception of document requests related to Dondero's communications with Andrew Clubok, which period commenced on November 1, 2020, which were not relevant to the claims in this proceeding. After having the opportunity to review emails and documents exchanged between Dondero and Clubok, including settlement discussions and communications related to the Pot Plan, the Debtor later admitted on the record that its alleged concerns were unfounded.

[17] *See* Term Sheet, Dkt. 354, Exhibit C.

possessing relevant information of their obligation to preserve such data."[18] If the Debtor believed that Dondero might possess relevant information, it was the Debtor's obligation under the Term Sheet to notify Dondero. The Debtor did not do so until December 23, 2020. The Debtor's failure to timely do so should not be imputed to Dondero, when Dondero had held his phone for more than a year after this case was filed and only replaced it when it became clear that the company's monetization plan would proceed and nearly all employees would be imminently terminated.

C. Any violation of the TRO was ministerial, the Debtor suffered no harm, and Dondero substantially complied with the order.

43. While Dondero concedes that he made certain, extremely limited and inconsequential communications with certain of the Debtor's employees, Dondero believed that those communications were allowed for him to pursue his Pot Plan or were otherwise explicitly allowed as a result of the Shared Services Agreements, pursuant to which certain employees of the Debtor (referred to as the "Shared Employees" in those agreements) also provide certain services to NexPoint and HCMFA, including in the areas of information technology, legal and compliance, accounting, telecom (including cell phones), and administrative and secretarial support. As an employee and/or representative of these two entities, it was standard practice for Dondero to confer with these employees under the Shared Services Agreements related to these services.

44. And even if there were communications made that could be viewed as violating the TRO, the communications themselves were either ministerial in nature or did not in any way relate to trying to interfere with or other impede the Debtor's business. The Debtor will not be able to show these communications interfered with or impeded the Debtor's business or how they caused harm, financial or otherwise, to the Debtor.

[18] *Id.* at p. 44 of 62. ("Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data").

45. The ministerial nature of the communications is evidenced by the communications themselves. One such communication put into evidence by the Debtor was a text message to Isaac Leventon wherein Dondero simply requested the contact information for the Committee's counsel so he could contact them regarding his Pot Plan. Other communications identified by the Debtor are similar in that they do not relate to the Debtor's business or operations or any attempt by Dondero to interfere with the Debtor's business. All or substantially all of the communications made by Dondero to Debtor's employees, which were extremely limited, were made under the Shared Services Agreements, related to the Pot Plan, or were otherwise explicitly authorized by the Debtor or made for settlement purposes.

46. In this case of communications with Scott Ellington, for example, the evidence will show that the communications between Dondero and Ellington were extremely limited during the applicable period and were made only pursuant to Shared Services or in Ellington's role as "go-between" or "settlement counsel" for Dondero and the Debtor.

47. For these reasons, although there were certain limited communications made between Dondero and certain of the Debtor's employees, the Court should find that Dondero substantially complied with the TRO because the communications were either subject to an exception under the TRO, related to the Pot Plan, or were otherwise not related to the Debtor's business or any attempt by Dondero to interfere with the Debtor's business. In the event the Court finds that any communications violated the TRO, the sanctions should be limited because the Debtor suffered no harm to its business or operations as a result of these limited communications.

D. The Debtor improperly seeks to conduct irrelevant and unauthorized discovery against third parties in connection with the Contempt Motion.

48. The Debtor asserts that Dondero violated the TRO by preventing the Debtor from completing its document production related to The Dugaboy Investment Trust and The Get Good

Trust that the Debtor alleges, without support, are hidden on its system. But whether these allegations are true or not is irrelevant to this proceeding because the TRO contained no provision requiring these documents be produced or any provision in any way related to the discovery matters between the Debtor and the Committee. If the Debtor or the Committee believes they are entitled to discovery from Dugaboy or Get Good, they can seek to conduct that discovery. But considering this matter in the context of a contempt proceeding against Dondero individually confuses the issue, wastes the Court's time, and potentially draws the Court into the middle of a discovery dispute between those who aren't even a party to this proceeding. It is also unclear how the Debtor expected or expects Dondero to produce documents on the Debtor's system when he has been prevented from accessing the Debtor's system for quite some time and has not had access to it for months. Further, given that the Committee filed suit against Dugaboy and Get Good in December 2020 and there is now a pending adversary proceeding,[19] it seems that trying to require Dondero (who is not the Trustee of the trusts) to produce these documents may deprive Dugaboy and Get Good of their rights and discovery protections under the Federal and Bankruptcy Rules.[20] The TRO did not contemplate this issue and the Court should not consider it in this context.

49. Moreover, even if this issue is relevant, the evidence will show that counsel for the Trusts and the Debtor have been engaging in discussions since mid-December and into January 2021 regarding the production of these documents, and the Trusts have been working in good faith with the Debtor to foster the eventual production of these documents.

E. The Debtor improperly seeks damages and to punish Dondero for conduct that could not in good faith violate the TRO and that pre-dated the TRO.

[19] *See Official Committee of Unsecured Creditors v. CLO Holdco, Ltd., et al.*, Adv. Proc. No. 20-03195, Amended Complaint at Adv. Dkt. 6.

[20] There are also concerns about production in this context because the Debtor, on January 22, 2021, commenced adversary proceedings against all Dondero-related entities for certain demand notes except for those between the Debtor and Dugaboy and Get Good.

50. The Court should reject the Debtor's attempt to impose broad damages on Dondero related to actions that could not in good faith be found to violate the TRO. To the extent the Court finds any material violations of the TRO, the damages should be limited to actual damages resulting directly from such actions only, which Dondero believes will be minimal because the Debtor's business suffered no harm. The Debtor is improperly seeking damages resulting from numerous actions and events that have nothing to do with the TRO, pre-dated the TRO, or just are plainly wholly outside the scope of the TRO.

51. Among these are (i) Dondero's replacement of his cell phone; (ii) Dondero's "trespass" on Debtor's property; (iii) the filing and prosecution of the CLO Motion by the Funds and Advisors; and (iv) the sending of request letters to the Debtor by counsel for the Funds and Advisors. As explained above, none of these actions can be considered violations of the TRO and therefore should not be considered in any damages, compensatory or otherwise, sought by the Debtor, including Debtor's request for attorney's fees and expenses related to the CLO Motion.

III. ADMISSIONS/DENIALS[21]

52. Paragraph 1 of the Contempt Motion asserts a legal conclusion to which no response is required, to the extent a response is required, Dondero denies the allegations.

53. Dondero admits the allegations in paragraph 2 of the Contempt Motion.

54. Paragraph 3 of the Contempt Motion asserts a legal conclusion to which no response is required. To the extent a response is required or appropriate, Dondero lacks knowledge upon which to either admit or denial the allegations.

[21] Dondero makes these qualified admissions and denials to comply with applicable law and rules, but denies that the allegations in the Contempt Motion, including Sections B, C, and G, and certain of these admissions and denials in response are relevant or admissible in the hearing on the Contempt Motion, particularly as in response to the allegations made in Sections B, C, and G of the Contempt Motion. On February 20, 2021, Dondero filed a motion in limine seeking to exclude irrelevant and prejudicial evidence the Debtor will seek to admit on these matters. Dondero objects to the inclusion of any evidence related to these matters at the Contempt Hearing and reserve all rights.

55. Paragraphs 4-6 of the Contempt Motion asserts legal conclusions to which no response is required. To the extent a response is required, Dondero denies the allegations.

56. Dondero denies the allegations in paragraph 7 of the Contempt Motion.

57. Dondero admits that notice of the Contempt Motion was provided to his counsel as alleged in paragraph 8 of the Contempt Motion.

58. To the extent necessary, Dondero further responds to the legal assertions and other allegations made in the Debtor's Brief[22] as follows: Dondero admits that on December 10, 2020, the TRO was entered as alleged in paragraph 1 of the Brief. This paragraph is not an exact recitation of the terms of the TRO, and Dondero avers that the terms of the TRO speak for themselves. To the extent a response is required or appropriate, Dondero denies the allegations because that is not an accurate recitation of the terms of the TRO.

59. Dondero denies the allegations contained in paragraphs 2-4 of the Brief.

60. Dondero admits that on December 10, 2020, the TRO was entered as alleged in paragraph 5 of the Brief. This paragraph does not appear to be an exact quotation of the terms of the TRO, and Dondero avers that the terms of the TRO speak for themselves. Dondero denies the remainder of the allegations contained in paragraph 5 of the Brief.

61. Dondero denies the allegations contained in the first sentence of paragraph 6 of the Brief. Dondero admits he never reviewed the declaration of Seery. With respect to the remainder of the allegations of paragraph 6, Dondero admits that the bullet points 1, 4, 5, 6 appear to be a generally accurate recitation of Dondero's deposition testimony on January 4. Dondero denies the remainder of the allegations as they are not a complete and accurate portrayal of the facts surrounding Dondero's efforts to review the TRO.

[22] *Debtor's Memorandum of Law in Support of 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. 49] (the "Brief").

62. Dondero denies the allegations contained in paragraph 7 of the Brief.

63. Dondero lacks knowledge after reasonable inquiry to form a belief as to the allegations in the first and second sentences of paragraph 8 of the Brief, and therefore denies same. Dondero denies the allegations contained in the third sentence of paragraph 8 of the Brief. Dondero admits that during his deposition he could not recall what happened to the phone. Dondero denies the remainder of the allegations of paragraph 8 of the Brief. Dondero has also testified that the phone may have been provided to him for use under the Shared Services Agreements.

64. Dondero lacks knowledge after reasonable inquiry to form a belief as to the allegations in paragraph 9 of the Brief about the Debtor's demands, and therefore denies same. Dondero denies the remainder of the allegations in paragraph 9 of the Brief.

65. Dondero admits he has previously communicated by text as alleged in paragraph 10 of the Brief. Dondero denies the remainder of the allegations in this paragraph.

66. Dondero admits that on or about December 23, 2020, the Debtor demanded that Dondero no longer access the Debtor's office space as alleged in paragraph 11 of the Brief. Dondero denies the remainder of the allegations contained in paragraph 11.

67. Dondero admits that he was at the Debtor's office on January 5th to attend his deposition, but denies that he was not authorized to access the space and denies that this was a violation of the TRO. Dondero denies the remainder of the allegations in this paragraph.

68. Dondero admits that he did not seek Debtor's explicit permission to enter the premises as alleged in paragraph 13 of the Brief, but believes no permission was required, because he was only there to attend his deposition and because of the shared services agreements.

69. Dondero denies the allegations made in the first sentence of paragraph 14 of the Brief, however Dondero admits that he has certain control and/or ownerships rights of certain

funds and financial advisory firms that are not named or identified in this paragraph. Therefore, Dondero lacks knowledge on which to admit or deny the allegations or insinuations made by the Debtor in paragraph 14 of the Brief, and therefore denies same. Dondero denies the remainder of the allegations made in paragraph 14 of the Brief.

70. While Dondero upon information and belief is aware that letters were sent by attorneys for certain funds and financial advisory firms to the Debtor on or around December 22, 23, and 30, 2020, Dondero lacks knowledge after reasonably inquiry sufficient to form a basis to admit or deny the remainder of the allegations of paragraph 15 of the Brief, and therefore denies same. Dondero denies the remainder of any additional allegations made in this paragraph. Dondero denies there were any threats in any letters to the Debtor.

71. Dondero admits that he knew the letters were being sent but denies that he knew the full content of the letters as alleged by the Debtor in paragraph 16 of the Brief. Dondero denies the remainder of the allegations of paragraph 16 of the Brief.

72. In reference to paragraph 17 of the Brief, while Dondero admits that there were certain extremely limited communications made between him and Leventon and Ellington, he believed that those communications were allowed under an exception to the TRO, to pursue his Pot Plan, under the shared services agreements, or with respect to Ellington, due to his role as a "go-between" between him and the Debtor or the Independent Board. Dondero denies the insinuations and allegations made by the Debtor related to the alleged communications in paragraph 17 of the Brief. Dondero denies the remainder of the allegations in paragraph 17.

73. With respect to paragraph 18 of the Brief, Dondero admits he became aware that "several entities" had reportedly been looking for the Dugaboy and Get Good financial documents, but otherwise denies the allegations in paragraph 18 of the Brief. Dondero denies that the

documents of Dugaboy and Get Good are the Debtor's property. Dondero denies the remainder of the allegations of paragraph 18 of the Brief.

74. Paragraphs 19-21 of the Brief contain legal authorities/assertions to which no responses are required. To the extent a response is required or appropriate, Dondero denies the allegations. Dondero denies the allegations contained in paragraph 22 of the Brief.

CONCLUSION

Defendant respectfully requests that the Court deny the Contempt Motion and grant Defendant such other and further relief to which he may be justly entitled.

Dated: February 21, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: michael.lynn@bondsellis.com
Email: john@bondsellis.com
Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on February 21, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Bryan C. Assink
Bryan C. Assink

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
	December 10, 2020
	9:30 a.m. Docket
Debtor.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 20-3190-sgj**
Plaintiff,	- MOTION FOR PRELIMINARY INJUNCTION
v.	- MOTION FOR TEMPORARY RESTRAINING ORDER
JAMES D. DONDERO,	
Defendant.	

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

WEBEX/TELEPHONIC APPEARANCES:

For the Plaintiff:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Plaintiff:	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 Chicago, IL 60603 (312) 853-7539

Dondero Ex. 12

APPEARANCES, cont'd.:

For the Defendant:	D. Michael Lynn John Y. Bonds, III BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102-5304 (817) 405-6903
For the NexPoint Parties:	James A. Wright, III K&L GATES State Street Financial Center One Lincoln Street Boston, MA 02111 (617) 261-3193
For the CLOs/Issuer Group:	James E. Bain JONES WALKER, LLP 811 Main Street, Suite 2900 Houston, TX 77002 (713) 437-1820
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 - DECEMBER 10, 2020 - 9:58 A.M.

THE COURT: We only have left today the Highland matter. There may be people on the line for the RE Palm Springs matter, but if you're on the line for that, the Court granted a motion for continuance that was filed by SR Construction, Inc. a few days ago. So if you were on the line for that, that's been continued at the Movant's request. Or the Objector's request, I should say. And it's to be reset at such point in time as the lawyers seek that.

All right. So, with that, I am going to turn to Highland and our emergency motion for a temporary restraining order against James Dondero that was filed by the Debtor. First, for the Debtor team, who do we have appearing?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz, also with John Morris. John Morris will be handling the hearing today on behalf of the Debtor.

THE COURT: All right. Thank you. For Mr. Dondero, who do we have appearing?

MR. BONDS: Your Honor, John Bonds and Michael Lynn.

THE COURT: All right. Thank you. The Committee, I know, is interested in this. Who do we have appearing for the Committee?

MR. CLEMENTE: Good morning, Your Honor. Matthew Clemente; Sidley Austin; on behalf of the Committee.

THE COURT: All right. I'm going to ask, do we have anyone appearing for certain parties who filed another emergency

motion yesterday, I think involving what seemed like very overlapping issues. The parties that I'm talking about are Highland Fixed Income Fund; NexPoint Advisors, LP; NexPoint Capital, Inc.; and NexPoint Strategic Opportunities Fund. Do we have anyone -- I think it was the K&L Gates firm who filed an emergency motion yesterday on, like I said, what I think are some overlapping issues with what we're going to hear about today. Anyone here on the line for those entities?

MR. WRIGHT: Yes. Good morning, Your Honor. It's James Wright, K&L Gates. I wasn't expecting this matter to be on today, so I need to apologize for not having a coat and a tie.

THE COURT: Okay. Well, I realize I picked you out. But could you, for the court reporter, say your last name again? It was a little garbley.

MR. WRIGHT: Yes. It's James Wright, W-R-I-G-H-T.

THE COURT: Okay. Thank you. Well, we have a lot of other folks on the line, so I'll just ask: Is there anyone else out there who desires to appear? This was obviously set very expedited, so maybe people did not file a pleading to weigh in, but maybe they're wanting to appear. If so, go ahead. (No response.) All right. Hearing no others, I will go to you, I guess, Mr. --

MR. BAIN: Your Honor?

THE COURT: Oh, go ahead.

MR. BAIN: Your Honor?

THE COURT: Yes?

MR. BAIN: I'm sorry. I was on mute. This is Joseph Bain of the law firm of Jones Walker. I represent the CLOs. And Your Honor, at the appropriate time, if Your Honor doesn't mind, I have a few comments that may help inform the Court on kind of what's going on. But I'm happy to wait until the appropriate time.

THE COURT: Okay. Very good. Well, and the reason why I picked out Mr. Wright regarding that newest emergency motion is, you know, I know they've asked for an emergency setting next Tuesday, and I have not -- I've not made a decision on that. I kind of wanted to see what I hear about today and figure out if there's really, you know, a need for that or not.

So, thank you, Mr. Bain. We'll talk to you at some point today.

MR. BAIN: Thank you, Your Honor.

THE COURT: Any other appearances?

All right. Well, I was about to go back to or go to Mr. Morris. But let me ask Mr. Bonds or Mr. Lynn: Did you file a responsive pleading? When I left here yesterday afternoon, I did not see one. But was there one filed late at night, by chance, that I just haven't seen?

MR. BONDS: No, Your Honor, we have not.

THE COURT: Okay. Thank you.

MR. BONDS: (garbled)

THE COURT: All right. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor. John Morris;

Pachulski, Stang, Ziehl & Jones; for the Debtor.

Let me begin by thanking Your Honor for hearing us on such shortened notice. What I thought I'd do is spend a few minutes, Your Honor, talking about why we're here, summarizing the facts, and then summarizing for the Court the relief that we're seeking.

As Your Honor, I presume, is aware, we filed this motion on Monday, together with a declaration from Jim Seery, the Debtor's CEO and CRO, with 29 separate exhibits. And if it pleases the Court, I'd like to proceed in that manner.

THE COURT: All right. You may.

MR. MORRIS: Okay. Your Honor, we do regret that we're here, frankly. The Debtor has worked very hard during the course of this case to get to where we are. We have a plan on file that calls for the monetization of the Debtor's assets for distribution to holders of allowed claims, we have an approved disclosure statement, and confirmation is just five weeks away.

Unfortunately, in the last couple of weeks, Mr. Dondero has engaged in what we firmly believe is wrongful conduct and can't really be credibly disputed or justified. As Mr. Seery lays out in his declaration and as Mr. Dondero's own written words show, Mr. Dondero recently interfered with the Debtor's operations and decisions and made some rather explicit threats.

We're not here to punish Mr. Dondero. We're not here seeking sanctions for violation of the automatic stay. Rather, we're here to simply set some very clear and firm ground rules on a go-forward basis so the Debtor can get across the finish line without interference or coercion by Mr. Dondero or anyone acting on his behalf. That's all we're here to do today.

We tried to work with Mr. Dondero's counsel on a stipulation, but regrettably were unable to do so.

So let me describe for the Court the facts that support the motion, and at the end of that I will offer our exhibits into evidence.

I do want to provide some context into how we got here. The facts are pretty simple. As Your Honor will recall, back in January, with this Court's approval, Mr. Dondero surrendered control of the Debtor to an independent board of directors, including Mr. Seery. As Your Honor knows, though, Mr. Dondero was retained as a portfolio manager and as an unpaid employee of the Debtor.

Pursuant to the Court's order and the term sheet entered into with the Unsecured Creditors' Committee, Mr. Dondero's responsibilities were to be determined by the board, and he agreed to resign at the board's request.

Over the summer, as Your Honor will recall, Mr. Seery was appointed the Debtor's CEO and CRO. Throughout this time, Mr.

Seery worked closely with Mr. Dondero. And one of the things they worked on was trying to come up with a so-called pot plan, the goal of which was to come to a consensual resolution of this case. Mr. Seery's goal, the (garbled) goal, the Debtor's goal, was to try to give the estate an alternative to the monetization of the Debtor's assets, and Mr. Seery worked hard and in good faith in that regard.

As Your Honor will also recall, in late summer the Debtor and certain litigation creditors agreed to mediate these disputes. In September, the Debtor announced that it had reached an agreement with Josh Terry and Acis to resolve their claims. I don't need to remind the Court of the nature of the disputes between Mr. Dondero and Mr. Terry, but suffice it to say that Mr. Dondero made clear that he opposed not only the settlement that was reached at the mediation, but, really, any settlement at all with Mr. Terry.

At around the same time, while still trying to get to the pot plan and a consensual resolution, the Debtor did present its plan of reorganization that provides for the monetization of the assets for the benefit of creditors. By the end of September, Mr. Dondero made it clear that he would oppose both the Acis settlement and the Debtor's plan.

He has every right to do that, Your Honor. Well, those steps are contrary to the interests of the Debtor. In addition, it also became clear that Mr. Dondero, through

(garbled) trust, has continued to press his claims that the Debtor had -- that the Debtor had mismanaged Multi-Strat during the case.

For these reasons, I think on October 2nd the board asked Mr. Dondero to resign, and he did so on October 9th.

With confirmation on the horizon, in the last couple of weeks, regrettably, Mr. Dondero has, in fact, interfered with the Debtor's business. There's no dispute that the Debtor serves as the manager of certain CLOs. There's no dispute that Mr. Dondero and certain of his affiliates hold a portion of the preferred notes in the CLOs managed by the Debtors. I don't think there's any dispute that the Debtor's duty is to the CLOs and not to any particular holder of CLO interests.

In late November, in furtherance of his duties, Mr. Seery directed that certain assets held by the CLOs be sold. Mr. Dondero and certain entities he controls, the ones that we mentioned earlier, Your Honor, the ones that are the (garbled), apparently disagreed with Mr. Seery's business judgment, and that happens.

I do want to point out, I don't know if Your Honor has had a chance to read the competing TRO, --

THE COURT: I have.

MR. MORRIS: -- but what's notable -- okay. What's notable in there, Your Honor, is that they expressly admit, and I'm quoting, the Debtor is responsible for making

decisions to sell the CLOs' assets. They admit that in their request for a TRO.

So there's no dispute that Mr. Seery has the right to do what he set out to do. Nevertheless, Mr. Dondero intervened and personally stopped the trades that Mr. Seery authorized. It's in writing. It can't be disputed. In fact, it's set forth in Exhibit 8, which is attached to Mr. Seery's declaration, which can be found at Docket 4 to the adversary proceeding.

Not only did Mr. Dondero cause the trades to halt, he told certain people, including the Debtor's chief compliance officer, not to do it again, and (inaudible) that they would face personal liability if they did so.

The Debtor sent cease-and-desist letters to Mr. Dondero and his affiliated entities. Those letters are attached as Exhibits 9 and 10 to Mr. Seery's declaration. And the fact is, Your Honor, for this particular part of the episode, Mr. Seery's conduct is simply unacceptable and was one of the events that precipitated the filing of this motion.

THE COURT: You said Mr. Seery. I think you meant Mr. Dondero.

MR. MORRIS: I apologize, Your Honor. I certainly did, yes.

THE COURT: Okay.

MR. MORRIS: The other event that caused the Debtor

to file this motion was a rather explicit written threat that Mr. Dondero made to Mr. Seery promptly after the Debtor acted to fulfill its fiduciary duties to the estate.

As the Court may generally be aware, Mr. Dondero and certain of his affiliates are the makers under a series of promissory notes in favor of the Debtor. The notes are attached as Exhibits 11 through 23 to Mr. Seery's declaration. Certain of these notes are demand notes, meaning that they don't have a term, they don't expire at some defined point in the future, they're payable upon demand by the holder. The Debtor is the holder of these notes.

Last week, the Debtor exercised its right to make a demand for payment of all unpaid principal and accrued interest, estimated to be approximately $30 million in the aggregate. Those demands are set forth in Exhibits 24 through 27 in Mr. Seery's declaration.

The demand notes are property of the Debtor's estate, collection of the notes is part of the Debtor's liquidity plan, and the proceeds are expected to be used to pay creditors' claims.

Shortly after the demand for payment on the notes was made, Mr. Seery [sic] sent a short text that can be found at Exhibit 28, saying simply, Be careful what you do. Last warning.

To Mr. Seery's surprise, Mr. Dondero called him the

following morning, ostensibly to talk about his pot plan. As laid out in his declaration, Mr. Seery expressed considerable concern over the threat, expressed his view that he thought it was unlawful, and was surprised, really, at the nature of the conversation.

Mr. Dondero didn't apologize during that call. He didn't express regret. Instead, he suggested that the lawyers would handle that issue. And only at the end of the call, when Mr. Seery pressed, did Mr. Dondero begrudgingly say that he didn't mean any physical harm.

Your Honor, we're five weeks away from confirmation. The Debtor is laser-focused on getting there. We are -- continue -- we have resolved substantial claims. We continue to resolve substantial claims. And though if there was a viable pot plan the Debtor would still pursue it, the Debtor is seeking a smooth transition into its post-bankruptcy state. We continue to negotiate with creditors who have outstanding claims. And we need peace. We need the freedom to get there.

As a result of the foregoing, the Debtor seeks the entry of a temporary restraining order in the form of Exhibit A attached to the motion, which is on Docket #2 in the adversary proceeding. In substance, the form is intended to prevent Mr. Dondero from interfering with the Debtor's business, engaging in threatening or coercive conduct, and using his affiliates or others acting on his behalf to do the same.

In our discussions with Mr. Dondero's counsel, it became clear that Mr. Dondero was not interested at this time in resolving the entirety of the dispute. We wanted to get this whole adversary proceeding open and closed and put this behind us. But regrettably, we're here today to press the motion because we were unable to come to that agreement.

So, in addition to the entry of the order attached to the motion, the Debtor also requests that the Court hold an evidentiary hearing on the Debtor's request for a preliminary injunction on January 4th, when we already have time on the Court's calendar.

And so that there's no misunderstanding, if the parties cannot resolve this matter beforehand, the Debtors do intend to take discovery during the intervening period. We will be prepared on January 4th, and we would expect, if forced to, to call Mr. Dondero as a witness at that hearing.

I have nothing further, Your Honor. Oh, actually, I do have something further. The Debtor moves for the entry into evidence of the declaration of Mr. James P. Seery, Jr. (muffled).

THE COURT: Okay. You got a little garbley. I think someone unmuted their device during your --

THE CLERK: Mr. Bonds --

THE COURT: Okay. But the request was that the Court admit into evidence the declaration of Mr. Seery at Docket

Entry #4, along with the 29 exhibits that were attached to that declaration. Any objection? (No response.) All right. Those will be admitted into evidence.

(Debtor's 29 exhibits are received into evidence.)

THE COURT: All right. Mr. Bonds, what does Mr. Dondero wish to tell the Court? All right. I think you put yourself back on mute when I made the comment. Please unmute your device.

MR. BONDS: I'm sorry, Your Honor. Can you hear me?

THE COURT: I can.

MR. BONDS: Your Honor, I would first like to apologize for Mr. Dondero's email to Mr. Seery. It should not have been sent. It is unfortunate that Mr. Dondero had several good points to make, but the message he was trying to send to the Debtor seems to have been lost, and for that I apologize.

Mr. Dondero had serious concerns about the way in which the Debtor's employees have been treated in this case. As the Court knows, the employees who built this company will be terminated either on December 31st or upon confirmation of the Debtor's most recent plan. Mr. Dondero does not agree to such termination or the financial treatment of the employees, especially the treatment over the last few months, in which they have seen their claims be substantially reduced.

Your Honor, Mr. Dondero is further concerned with the

Debtor's lack of sale of assets, especially the lack of competitive bidding. Mr. Dondero may want to bid on some of those assets, and under the Debtor's procedure, he is being precluded from bidding, even if the sale is outside of the ordinary course of business.

Mr. Dondero is further frustrated by the Debtor's sale of certain CLOs under applicable law. Is this an attempt around the hearing on the 16th? I don't know, Your Honor, but we are set for the 16th on the issue of whether or not the sales are being made outside the ordinary course of business. Is the Debtor trying to sell its assets without competitive business -- bidding? Why is that?

And what the Debtor would like you to sign is as an overly broad TRO written, I suspect, with a peppering of anger throughout. The relief requested is basically in the declaration of Jim Seery. It contains a number of acts which the Debtor seeks to have this Court determine are prohibited conduct. That term is defined in the Debtor's motion for TRO. We assert that such language is overly broad and its (inaudible) behavior which Debtor seeks to prohibit is not justified, inapplicable, or simply does not make common sense.

Your Honor, in the second paragraph of the proposed TRO, there are five general concepts that are listed as prohibited conduct. The first category of prohibited conduct which we have issues with relates to Mr. Dondero communicating with the

Debtor's employees except as it relates to the shared services provided by or controlled by Mr. Dondero. Such a prohibition is unreasonably broad and seemingly may well violate the First and the Fourth Amendments.

Your Honor, we ask the question: Can Mr. Dondero communicate something as basic as an employment contract with an employee who is going to be let go without violating the TRO?

The second category of prohibited conduct relates to allegedly interfering or otherwise impeding, directly or indirectly, the Debtor's business concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the plan or any alternative to the plan. Your Honor, what does the word indirectly mean? Does such prohibition prohibit the Debtor from pursuing -- or Mr. Dondero from pursuing his Acis 9019 motion or appeal? What does the language mean with regard to pursuit of the plan or any plan alternative? Has the Debtor turned the shield into a sword? Can the Debtor -- can Mr. Dondero try to sell his pot plan which he and the mediators have worked so diligently on? Does Mr. Dondero violate the terms of the TRO simply by voting against the plan?

Is this really what the Debtor wants, or does the Debtor want to return the most money that it can to the Debtor's creditors?

Can Mr. Dondero even (inaudible) in the organization without violating the TRO?

Finally, the proposed order provides that Mr. Dondero is further temporarily causing -- temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) an entity owned or controlled by him and/or any person or any entity acting on his behalf from directly or indirectly engaging in any prohibited conduct. Again, what does the word causing mean? What about the word encouraging? Does that mean that the Debtor simply cannot do any action to protect himself -- Mr. Dondero cannot take any action to protect himself? Are we setting up Mr. Dondero to fail?

Your Honor, what we would ask, what we would ask the Court to do is either deny the TRO as being overly broad or order the Debtor to come up with some reasonable restrictions going forward. We are happy to consider anything reasonable, but the proposed TRO is anything but reasonable.

In summary, we ask the Court how the status quo would be altered by a TRO.

Your Honor, I think Mr. Morris has indicated that the Debtor intends to be able to confirm a plan on the 5th -- or the 12th, excuse me, of January. Your Honor, we don't believe that that's appropriate. Is Mr. Dondero prohibited from trying to get his plan confirmed? Is he -- I mean, it seems to me that he basically is.

Your Honor, with regard to two arguments made by Mr. Morris, or at least one, we deny that any demand notes precipitated Mr. Dondero's email. It had absolutely nothing to do with it. But we're not here to talk about Mr. Dondero's demand notes at this point.

I don't think I have anything further.

MR. MORRIS: If I may respond very briefly, Your Honor?

THE COURT: You may. Go ahead.

MR. MORRIS: Okay. Your Honor, we are cognizant, and we don't mean, with all due respect to Mr. Bonds, to infringe on any way Mr. Dondero's right to make applications to this Court, to file motions. I think I heard mention of, you know, questions as to whether Mr. Dondero could pursue his motion against Acis, his appeal of the Acis, about whether or not or he could file things in this Court. We expressly put in a footnote, in order to try to make it clear, that Mr. Dondero has and will continue to have a right to make any application he wants to this Court, to object to any motion that's made. That's not the point of the exercise. The point of the exercise is to protect the Debtor from interference -- to protect the Debtor (echoing) from interference, coercion, and from threats. It's really that simple. I don't know why words that we use in common language every day, such as causing or conspiring or encouraging, should be deemed to be

ambiguous. I think, given the importance of these issues, one ought to be able to stay on the right side of that line without questioning whether or not they're actually conspiring with somebody or encouraging somebody to do something that they're otherwise prohibited from doing.

What the Debtor will not tolerate, Your Honor, is play whack-the-mole, where we get an order against Mr. Dondero, only to have one of his affiliated entities or somebody acting on his behalf attempt to say, oh, no, I'm here acting on my own independent behalf, and they're going to do exactly what Mr. Dondero is prohibited from doing. So that's all.

Again, Your Honor, we're not here with hysteria. I don't think our papers were intended to nor did they project any hysteria. I think, with counsel, as provided for in the proposed order, we would be delighted to continue to work with Mr. Dondero constructively. If he's got ideas on his pot plan, we're not precluding him from doing that at all. All we're saying is that he's got to participate with counsel and that he's not going to make any further direct communications to the Debtor's officers, directors, or employees. That's all, Your Honor. We think it's really quite reasonable under the circumstances.

I have nothing further.

THE COURT: All right. Well, --

MR. BAIN: Your Honor?

THE COURT: Who just spoke up?

MR. BAIN: (garbled) Yes. Joseph Bain on behalf of the CLOs, if I may be heard.

THE COURT: Okay. Everybody else mute their line. Okay. Go ahead, Mr. Bain.

MR. BAIN: Yes, Your Honor. And can you hear me okay?

THE COURT: I can.

MR. BAIN: Wonderful. Your Honor, for the record, Joseph Bain of the law firm of Jones Walker on behalf of the CLOs.

Our role in this is obviously very sensitive, given the nature and relationships that exist. One of the things I did want to let Your Honor know, though, is that -- two things. One, one of the most outstanding issues, at least in my opinion, regarding confirmation of the plan is essentially what to do with the CLOs and collateral management agreements. That's still an open issue. If that's not resolved, there are significant rejection damages that could come from that. So that's the bad news.

The good news, however, is, up until this week, we've been negotiating with the Debtors and we have calls set for NexPoint -- with NexPoint to negotiate what all parties kind of refer to as a soft landing for the CLOs, which, to a large extent, involve the issues that are before you today.

I just, I just wanted to provide that context because the parties are talking and we are kind of taken aback by kind of the most recent event this week, because from an outsider's perspective, the current issues that are currently kind of at dispute here, we thought everyone was working towards a deal. And I think it is a little ironic that -- and as Your Honor knows, I was involved in the *Hoactzin* case, and I thought that that was a very -- I represented Mac Murray (phonetic) in that case, and I thought Ms. Byrnes and Mr. Hendricks did an excellent job of pulling all the parties together.

And Your Honor, I don't want to stray too far outside of my lane to suggest that that same approach is what is needed here, but I just want to raise for Your Honor to let you know that we are here. We're kind of the party stuck in the middle. And we're hoping and we're -- remain willing to negotiate all the outstanding issues. But obviously, given the nature of some of the allegations, it's more complicated right now.

THE COURT: Okay.

MR. BAIN: And that's all I have, Your Honor.

THE COURT: All right. Well, I appreciate you speaking up. And you may or may not remember that the Court ordered mediation last July, global mediation, including Mr. Dondero, mediation among the Debtor, Mr. Dondero, UBS, Acis, the Crusader Redeemer Committee, and we had a co-mediation

team. Retired Bankruptcy Judge Allan Gropper and former Weil Gotshal partner Sylvia Mayer. And while I don't communicate with mediators, I fully believe from the parties' reports that was mediation that the parties and lawyers tried very, very hard in to get to some settlements, and in fact, they did get to a settlement with Acis and the Redeemer Committee.

So, I have a heck of a lot of thoughts here, and I'll refrain from sharing every one of them, but I'm going to share a few of them. While I appreciate Mr. Bonds doing what was an honorable thing and apologizing on behalf of his client for the written communications that were worded in such a way where someone might think they were threatening or a violation of the stay, it wasn't an apology from Mr. Dondero directly. I think the really, really honorable thing might have been if Mr. Dondero came here, hat in hand, willing to go under oath and explain himself. You can share that with him, that's what this judge thinks, that the apology through counsel fell a little short, although I definitely appreciate counsel expressing the apology.

You know, I've been going back and forth looking at my computer screen today, and, you know, it's rather shocking to see in writing, you know, with the photo shot of a text where Dondero says, "Be careful what you do-last warning." I mean, that's just pretty shocking.

MR. BONDS: Your Honor? Your Honor?

THE COURT: Yes.

MR. BONDS: Can I have a second? Mr. Dondero did apologize to counsel and to Mr. Seery as well, and so the idea that Mr. Dondero has not apologized is not entirely correct.

THE COURT: Okay. Well, if I misunderstood, I apologize. But I guess what I was really trying to convey is, in a situation like this, I think coming into court and taking his lumps and saying things under oath might have been a better way to proceed.

I guess the second thing I want to say is I wish Mr. Dondero was here, because maybe I'm reading this wrong, but I think he needs to hear and know he is not in charge anymore of Highland. It may have been his baby. He may have created its wealth. But when he and the board made the decision to file Chapter 11, number one, that changed everything. And then number two, when the Committee was formed and was threatening "We think we need a Chapter 11 trustee because of conflicts of interest of Mr. Dondero and others," and when the Committee negotiated something short of that with the Debtor in January 2020, you know, a settlement that involved Mr. Dondero no longer being in charge, no longer being CEO, no longer having any role except portfolio manager with the Debtor, and when various protocols were negotiated, heavily negotiated, for weeks, detailed, complex protocols, life changed even further. It changed when he filed Chapter 11, when he put his baby,

Highland, in Chapter 11, and then it changed further in January 2020 when this global corporate governance settlement was reached. As we know, it involved independent new board members coming in and eventually a new CEO. He's not in charge.

Now, that doesn't mean he's not a party in interest, and he can certainly weigh in with pleadings in the bankruptcy court. But these communications that I've admitted into evidence, and the declaration, the sworn declaration of Mr. Seery, suggest to me that he's not fully appreciating that, sorry, you're not in charge. And when you chose to put the company in bankruptcy because of the overwhelming debt, it started a cascade of events, so that now I'm depending on a debtor-in-possession with a new board and a new CEO and a Committee of very sophisticated members and professionals who are working in tandem with the Debtor to be in charge, basically. All right? So that's another thing I just feel compelled to say for Mr. Dondero's benefit.

I guess another thing is there was a little bit of a theme, Mr. Bonds, in your comments that Mr. Dondero is just concerned, more than anything else, about the way employees are being treated, or at least that's a major concern. And I don't find that to be especially compelling. I mean, maybe if he was sworn under oath and testified, I would believe that, but it doesn't feel like what's really going on here. Again,

he took the step of deciding that the company should file Chapter 11. We had the change in corporate governance in January. And he has the ability -- everyone, I think, would very much be interested in a plan that he supports. You know, he wants to get the company back. That has been made clear in hearings from time to time, and I believe, from Seery's declaration and Highland's lawyers, that they've been and will remain receptive to Mr. Dondero's ideas for a different type of plan that might allow him to get back into control of Highland, if he puts in adequate consideration that makes the Committee and others happy.

But we're in a proverbial the-train-is-leaving-the-station posture right now. Okay? We've got confirmation coming up the second week of January or something like that. Okay. So the train is leaving the station, so we're running out of time to hear what Dondero might want to do as far as an alternative plan.

So, as far as the requested TRO, I appreciate that Mr. Dondero and his counsel are worried about some ambiguity, but I'm looking through the literal wording that has been proposed, and the wording proposed is that Dondero is temporarily enjoined and restrained for 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 such communications. Not ambiguous

at all to me, and not unreasonable. Okay? Time to have counsel involved in these conversations because, you know, we can't have businesspeople-to-businesspeople sending texts that look like threats to me.

Second, making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents. I don't think that's too much to ask. Please don't let him make threats to us anymore.

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. That seems reasonable to me because of the evidence in front of me.

Then 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 or controlled by the Debtor, and pursuit of the plan or any alternative to the plan.

Now, I guess maybe you're confused or feel like that is ambiguous. I will just say, for the sake of any doubt, and I think I heard Mr. Morris saying precisely this, that, you know, Dondero can file pleadings. Okay? He can file pleadings asking for relief. He can object to the plan. He can vote against the plan. And they are completely still open

to hearing about -- and I think they would have a fiduciary duty -- to hear about a pot plan that might be more favorable than what's on the table right now. But Mr. Morris, have I put words into your mouth? Isn't that exactly what you were saying?

MR. MORRIS: That is exactly right, Your Honor. And if you look, I think there's a footnote there that expressly provides -- gives Mr. Dondero the right --

THE COURT: Okay.

MR. MORRIS: -- confirms his right to do exactly what you just described.

(Echoing.)

THE COURT: Okay. Thank you for that. And I should say exclusivity is still in place, right? We don't -- I mean, I'm not inviting him to file a plan right now in violation of the exclusivity provisions, but I'm just saying discussions among lawyers, I think, are not only not prohibited but encouraged here.

And then, last, otherwise violating Section 362 of the Bankruptcy Code. Okay, the sky is blue. That is obviously not problematic.

Okay. So the next paragraph, James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with any entity owned or controlled by him and/or any person or entity acting on his behalf from directly

or indirectly engaging in any prohibited conduct.

You know, I don't -- I understand that indirectly, you know, there might be some concern about the ambiguity, but it looks like to me just sort of a catchall, okay, to the extent we didn't explicitly say it in the preceding paragraph, we don't want Dondero causing some employee of an affiliate he controls to do exactly what Dondero himself is prohibited from doing.

I don't think it's ambiguous. And if it is, if someone runs in here, he's violated Paragraph 3 of the TRO, well, obviously we would have a contested hearing where I'm not going to hold him in contempt of court unless I've got an evidentiary showing that would convince me of that.

So, I guess, on balance, I'm overruling the objections and I am granting the TRO.

And just to be clear, I'll make a record that bankruptcy courts certainly under Section 105 can issue a TRO, and courts are usually bound by the traditional factors of Rule 65 -- that is, looking at has there been a showing of immediate and irreparable harm? Is there a probability of success on the merits that the Debtor will be entitled to this when we have a later more fulsome hearing on the preliminary injunction request? Would the balance of equities favor the Movant Debtor here? And would the injunction serve the public interest?

I find from the evidence, the declaration of Mr. Seery, and the supporting documents, that all four prongs for a TRO are met here, so I am ordering it.

A couple of remaining things. We'll come back on January 4th to consider whether extension of this relief in a preliminary injunction is appropriate. I don't have at my fingertips the time of day where it's set on the 4th. Is it -- I think that's the Monday after the New Year's Day holiday. So I'm guessing we're set at 1:30.

Traci, if you're out there, can you confirm it's 1:30 on January 4th?

Okay. I'm not hearing a response from her. But Nate, maybe you can double-check that.

(Echoing.)

All right. Well, let's talk a minute about what is going to happen next week.

Mr. Bonds, I set -- okay, back on November -- please take your phone off mute when I am talking. Or put it on mute when I'm talking, please.

On November 19th, you filed the motion, basically -- I can't remember the wording of it -- but something like wanting to change the protocol for non-ordinary-course sales of assets. And you asked for an emergency hearing, and I denied that. And I was very concerned that it looked like an attempt to renegotiate the January protocol order that the Committee

had worked so hard to negotiate on. But it's set, finally. I think it's this next Thursday, a week from today.

But meanwhile, you know, again, I feel like the issues raised in that are very much overlapping with what we talked about today, as well as I feel like the January protocol order controls here, and it's an attempt to revisit that a month before confirmation.

But this newest emergency motion filed by Mr. Wright's client, it feels like, as I think I mentioned, the same type of motion dressed a little bit differently from entities controlled by Dondero rather than Dondero directly. And meanwhile, Mr. Wright has asked for a hearing next Tuesday. I'm not going to have three hearings on the same issue. So I guess I'll hear first from Mr. Dondero's counsel. I mean, what do you think I'm going to hear next Thursday that is going to change my mind about this was all covered in the January protocol order and I'm not going to revisit it a month before confirmation? Mr. Lynn, are you here to address that one?

MR. LYNN: Yes, Your Honor. First of all, I think the hearing is actually set for next Wednesday.

THE COURT: Okay.

MR. LYNN: Secondly, the motion filed by Mr. Wright, as I understand it, has to do with sales of assets by the CLOs that the Debtor manages as portfolio manager and not -- and

does not have to do with any sales of assets by the Debtor or its estate. So they're two different issues.

As I understand Mr. Wright's pleading, he is arguing that under the Advisers Investment Act, if I have that name right, that Mr. Seery, on behalf of the Debtor, ought not to ignore directions from or suggestions, requests, as they actually are, from investors in the CLOs with respect to the assets of the CLOs. That's entirely different from the concern that we are expressing with respect to sales of assets by the Debtor.

Secondly, while Mr. Dondero may have some influence on the CLOs, it is my understanding that the investors that Mr. Wright represents are governed by an independent board of directors, which Mr. Dondero may be on. I don't know whether he is or not.

Third, we are not trying to change the protocols. We do not believe anything in the protocols at all -- we've identified nothing in the protocols at all that says that the Debtor, and, by extension, Mr. Seery and the independent board, may take actions outside the ordinary course of business without notice and an opportunity for hearing before this Court.

We have asked in the alternative that if somehow the protocols authorize these actions, that the Court alter the protocols.

What triggered this, Your Honor, was a sale of an entity

known as SSP, which belonged to Trussway, which in turn belongs to the Debtor. We believe but we do not know for sure that the sale is below the price that could have been obtained. However, the sale was undertaken, as we understand, without competitive bidding, without notice -- certainly, there was no notice to Mr. Dondero -- and without an opportunity for anyone to be heard.

We do not think that the intention of the protocols was for this Court to abdicate its authority to oversee the Debtor's operations and to limit the authorities entitled to participate in decisions involving disposition of assets of major value, to limit the decision-makers to the independent board -- in particular, Mr. Seery -- and to limit it to the members of the Creditors' Committee, rather than providing notice generally to creditors, rather than providing a method for competitive bidding, rather than letting people know what is going on.

Your Honor has often stated, not just in this case, your concern that the process should be transparent. We believe that at this point the Debtor is attempting to use the protocols in an effort to avoid the transparency that creditors, equity interest owners, and most of all, this Court, are entitled to.

THE COURT: All right. Well, I don't know if anyone wants to respond to that, but --

MR. MORRIS: If I may, Your Honor.

THE COURT: Go ahead, Mr. Morris.

MR. MORRIS: Just very briefly. I think I heard Judge Lynn say that there's nothing in the protocols that authorizes the Debtor to sell assets outside the ordinary course of business. And if he made that admission, I still don't see the point of this motion next week. All they're doing is questioning the Debtor's business judgment. They don't really have a right to do that. Mr. Dondero doesn't have a right to participate in the sale of those assets. The Debtor -- you know, there's no evidence before the Court, there will be no evidence before the Court, as to how the Debtor decided, what factors they considered when deciding to sell these assets. This is just completely improper.

(Echoing.)

Mr. Dondero personally participated in the corporate governance resolution last January. There has been no complaint by him or anybody else about the protocols, about the Debtor having operated outside the protocols. The Debtor is transparent. Every single month, we file monthly operating reports. You can see what's happening with assets, right? We work with the Committee. The Committee's not here joining in this motion. The Committee hasn't complained about the process. It's just Mr. Dondero. He's simply trying to exercise -- this is just another attempt to further exercise

control. He can make his motion. It will be denied because the facts simply don't support it.

THE COURT: Mr. Clemente, is it wrong of me to assume that you and your clients are very vigilant in paying attention to trades, transfers, outside the ordinary course? I assume since, again, you have a committee of sophisticated parties who are owed hundreds of millions of dollars, and you so heavily negotiated the January protocol order, that you're following it meticulously and paying attention to what's happening. Do you care to comment?

MR. CLEMENTE: Thank you, Your Honor. I do. Matt Clemente, for the record, on behalf of the Committee.

You're exactly right, Your Honor, and Your Honor actually touched on several things that I would have said earlier.

First of all, the Committee is made up of very sophisticated members, which makes my job sometimes easy and sometimes challenging, because they are very hands-on and they do understand the business of Highland and we did heavily negotiate the protocols early in the case, Your Honor, and they were designed with exactly these types of transactions in mind, so that the Debtor had to come to the Committee and lay out its case for a particular transaction.

With respect to the transaction at issue, that's exactly what happened, Your Honor. We're not going to get into, obviously, Committee deliberations, but I can tell you that

the protocols have been followed.

As Your Honor knows, when we've had an issue under the protocols, I remember several months ago when we argued about certain distributions being made, the Committee certainly was not shy about bringing it to Your Honor's attention.

So we have been very vigilant and very diligent in holding the Debtor accountable under the protocols. And we believe that -- although, again, when we've had an issue, we've come to Your Honor. We believe that the protocols have worked as they were intended to and as they were designed, Your Honor.

So I can assure you that the Committee has been very vigilant and the Committee will continue to be very vigilant. These issues were all raised in the context of negotiating the protocols. That was before Your Honor. Mr. Dondero was involved with that. It was very difficult negotiations, Your Honor.

But this does seem like somebody now trying to renegotiate what it was that the parties agreed to and Your Honor approved early on in this case.

So, Your Honor, rest assured, the Committee has been very vigilant and will continue to be very vigilant.

THE COURT: All right. And I guess the last thing I'll say on that point is, while of course we always want transparency --

(Interruption.)

THE COURT: While we, of course, always want transparency and notice and opportunity to object, I mean, these are not your typical run-of-the-mill assets. They're not a parcel of real property or a building somewhere or inventory somewhere or intellectual property. I mean, these are -- you know, again, we have a unique business here. And I think that was very much recognized in the process of negotiating the protocols, that this is not the type of business where you do a 363 motion on 21 days' notice any time you feel like, oh, today's a great day to trade this or that in whatever fund.

Well, we will go forward on this motion, because Mr. Dondero is entitled to his day in court to make his argument, put on his evidence, and try to convince me that this is not just trying to renegotiate something Mr. Dondero agreed to 11 months ago on the eve of confirmation. But I want to make sure -- oh, we're getting --

(Echoing.)

(Clerk advises Court.)

THE COURT: Okay. You're on mute. You're on mute, Mr. Lynn.

MR. LYNN: Your Honor, may I explain briefly? This is very distressing. Mr. Morris says that it is the ordinary course of this Debtor's business to sell a subsidiary. This is not the ordinary course of the Debtor's business. There is

nothing in the protocols that says that the independent board and just the creditors on the Creditors' Committee may make decisions concerning major sales. We will present evidence to that effect when it occurs, and we believe strongly -- and I want to state, Your Honor, I didn't participate in negotiations of those protocols. I wasn't involved. And I've looked at them. There's nothing that says that this can occur without going to a hearing. And there is nothing in the protocols that defines ordinary course of business to involve this.

This motion was not filed because Mr. Dondero wanted to get in the way. It was filed because I thought it was the right thing to do because I thought that this was contrary to the way bankruptcy and Chapter 11 should work. And it was reasoned by me, with Mr. Dondero's consent. And I very, very much am upset to hear things people say that he's trying to get in the way with this. He is not. He's asking for something that is very, very, very reasonable. If they have nothing to hide, and I hope they don't and don't believe they do, but if the Debtor has nothing to hide, what is wrong with notice and a chance for hearing?

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. If I briefly may be heard.

THE COURT: Go ahead.

MR. POMERANTZ: I actually did negotiate the

protocols. And I think what Mr. Lynn is conflating is the Debtor selling Debtor assets and the Debtor acting in its management capacity to sell assets of entities it manages.

We will also present the case law that basically an entity that is not a debtor whose assets are being sold by the Debtor acting as a manager is not within the purview of this Court.

So Mr. Lynn can be frustrated, could be upset with what's happening, but we dealt with these issues last year. Because as Your Honor mentioned, this Debtor is not the typical debtor. And we had long negotiations with the Committee on what is ordinary course and what is not ordinary course. And as I mentioned to you the last time we were here, Your Honor, as I mentioned to you in January when we had this approved, we were not seeking to get authority to sell assets out of the ordinary course of business or do any transactions out of the ordinary course of business.

Mr. Lynn thinks that what's happening is out of the ordinary course of the business. This Court has said it's not. So we are prepared to go forward with the hearing. We've also spoken to the affiliated entities about putting their hearing on for the same date, because we also agree they -- both motions raise similar issues. And I think we're close to an agreement on having both of those motions heard at the same time on the 16th.

Thank you, Your Honor.

THE COURT: All right. So it's the 16th, Wednesday. Did we look that up, Nate?

THE CLERK: It's at 1:30.

THE COURT: It's at 1:30? All right. So we will go forward with the Dondero motion Wednesday, December 16th, at 1:30, and we will go ahead and set the what I consider closely overlapping motion filed by the NexPoint entities and Highland Fixed Income Fund by Mr. Wright, we'll go ahead and set that at the same time.

Let me say this as clearly as I can. If there's going to be a challenge to the Debtor's business judgment, Mr. Dondero, he needs to be present at the hearing on video and he needs to testify, okay? I understand what Mr. Lynn said, that this was his idea, he thought the January protocol order violated the Bankruptcy Code, blah, blah, blah, but I am going to order that Mr. Dondero be present December 16th at 1:30 and testify. Okay?

So I've kind of modified that. I said if the business judgment of the Debtor is being challenged, but no, I'm broadening that. I think Mr. Dondero just needs to provide testimony on Wednesday. Given everything I heard today with the TRO request, and given that, in substance, he's -- he is challenging the Debtor's business judgment and the mechanism where the Committee oversees it, he just needs to testify. All right? So please convey that to him.

Now, Mr. Wright, I'm first going to ask, I know you weren't -- you were just listening in today, but do you want to say anything? I see you put your jacket on now. Thank you.

MR. WRIGHT: I did. I did find a jacket. I'm sorry, Your Honor.

THE COURT: Okay. Go ahead.

MR. WRIGHT: (muffled) So I, you know, I can address why we're asking for limited relief. I can also address the underlying motion, which (inaudible) some of -- in the underlying motion --

THE COURT: Okay. Your sound is very difficult to hear. Could you repeat what you just said? I didn't get it.

MR. WRIGHT: Yes, Your Honor. I'm happy to address our motion for an emergency hearing. I'm also happy to address the underlying motion we're asking be heard on an emergency basis. I didn't know, do you want me to address both or just the motion for why we're asking for emergency relief?

THE COURT: Well, I've gone ahead and said I will set it next Wednesday. It sounds like the Debtor saw the efficiencies maybe in having this one heard at the same time as the Dondero motion.

I have a couple of things I want to say for the benefit of you and your client, but I was giving you the chance to say

something first.

Here's what I'm thinking, going into this, so you can be prepared to address this next Wednesday. Your motion feels to me exactly like what we litigated *ad nauseam* in the Acis case. Now, if any of the Acis lawyers are on the line or Mr. Terry is on the line, I wonder if they are chuckling. And what I mean is -- I heard a chuckle. I don't know if that was Ms. Patel. We had hearings --

MS. PATEL: It was, Your Honor.

THE COURT: Okay. We had hearings in the Acis case. Remember, Acis was a portfolio manager for CLOs. And the party that was in the bottom tranche of the CLOs, okay, the equivalent, I think, to your clients here, the NexPoint entities and Highland Fixed Income Fund, we sometimes called them the subordinated debtholders or the equity-holders, that party -- it was a party named HCLOF -- began during the *Acis* case trying to do a call, trying -- redemption notice. Acis, liquidate these CLOs. We are -- we're done. We're tired. You know, we're outside the reinvestment period. We want you to liquidate. And started to kind of force that issue. Highland was the sub-manager of Acis at that time. So, guess what, the Chapter 11 trustee filed an adversary proceeding asking for TROs, saying, you know, this is the portfolio manager's discretion. And not only that, what they're doing isn't a reflection of reasonable business judgment because,

you know, we don't think it's the right time actually to liquidate these CLOs, they're just trying to deprive the portfolio manager of his stream of revenue for managing this.

So we had multiple hearings about this. I issued a TRO saying stop it, bottom tranche of the CLOs. It seems transparent you're just trying to deprive Acis, the portfolio manager, of value. And you know, irony, irony, it's like the backwards situation here. They were saying, but we're so late in the life of these CLOs, it makes sense to liquidate them. Why would you want to keep these things going? We're not violating the stay. We're not jacking with the estate value and trying to deprive Acis of its revenue stream. Anybody knows it makes sense to liquidate these late-in-life CLOs. Very ironic to me, although maybe it's not the situation, apples to apples, but here, you see what I'm saying, it feels like same situation, only flip-flopped. The portfolio manager here, Highland, is going to be engaged in liquidating the CLOs, and your client, bottom tranche of equity, is saying no, don't do that. You know, there's still value there.

Now, I will say, in my Acis case, the equity tranche, they kind of -- their theory evolved over time. They were like, well, we actually just want CLOs managed by Highland, a Highland entity, and Acis isn't a Highland entity.

So, bottom line, I issued a TRO. Stop it, equity tranche. This is not your call, it's the portfolio manager, and I think

you're just jacking with the portfolio manager to screw up the reorganization. And guess what, we even had then a preliminary injunction and then a plan injunction. And of course, there were bells and whistles on what would evaporate the injunction. But that's now on appeal to the Fifth Circuit.

So, you know, at my confirmation hearing at least in Acis, if not previous hearings, we even had expert witnesses and we pored through the language of the portfolio management agreements. And I don't know if here we have the same situation, but it was complicated in Acis because we had the portfolio management agreements between the CLO manager and the CLO issuers, but then there was a separate management agreement between the equity tranche and, I don't know, I can't remember who the counterparty to that one was. But there, there were multiple agreements, and you had to parse through it, and we had experts testifying about, you know, discretion of the equity-holder versus not, or portfolio manager, da, da, da, da, da. And I ruled as I ruled. I granted the injunction, to the detriment of the equity tranche. And maybe the Fifth Circuit one day will tell me I was wrong. You know, I really think it's a hard, hard, hard issue.

But I'm just telling you, that's how I ruled on, I think, three occasions.

Maybe the portfolio management agreements are worded differently here. You know, maybe -- maybe it's a different issue. But I will say I read your motion yesterday with frustration. I'm like, haven't I ruled on this like three times in the Acis case? And then, you know, maybe I haven't. Again, maybe, maybe the portfolio management agreements in this case would convince me differently. But were you aware of how I ruled in Acis?

MR. WRIGHT: Your Honor, I'm aware of the Acis case, but no, I wasn't aware that this particular issue was addressed in such depth.

THE COURT: Okay.

MR. WRIGHT: (muffled) I will, of course, go take a look at all those hearings. I anticipate that I'm going to try to draw some distinctions between my situation and the situations there, but I certainly will be prepared to address that next week.

I think the thing that I would say just very broadly is that we are not -- I think our request is very limited in what we're asking for. All we are asking for is that there is a temporary pause on the Debtor exercising its right as portfolio manager to direct sales that we don't agree with for a ten-day period. And we would then use that period of time to explore, either consensually or through rights that we (inaudible). And then in the process of looking at this, Your

Honor, under the documents effecting a transfer of portfolio management, you know, these documents, they're based on the rights of the preference holders.

You know, my client's concern is really about the, you know, the investment time window of claim today versus the funds, the relevant -- again, Mr. Macur (phonetic) -- my clients include two advisors that are, you know, that are ultimately I think controlled by a vehicle that Mr. Dondero controls, but also I have a few clients that are funds that are required by SEC rules, as I understand it, to have a majority independent board. So I dispute that they're a Dondero-controlled entity, but I understand that that's testimony (inaudible). But I -- that's -- that's not right.

And so the funds, --

THE COURT: Who are the board members?

MR. WRIGHT: I can have that for you next week, Your Honor.

THE COURT: Okay.

MR. WRIGHT: I don't have it in front of me. But they're required by SEC rules to have a majority independent board. And so we -- the funds that are an advisor of my clients, they have a much longer-term investment horizon. So, you know, in my mind, I probably overly-simplistically analogize it to the difference between saving money for a house you intend to buy in a year and how you might invest

that versus saving money for retirement that you might do in 20 years. And I think any investment advisor will tell you you're going to -- you're going to do that differently, because with a long horizon you can accept (inaudible) and bucket changes and stuff like that. When they go out a long time, you know, it'll be okay. And on a short horizon, you know, you need to sort of make sure you're holding onto what you have and just approach it differently.

Highland, under its plan, is intending to liquidate at the end of 2022, which that's -- that's fine. That's what they're intending to do. But that's a very different investment time horizon than my clients, and so we -- you know, and they're -- they're proceeding to run, you know, their liquidations that way. I don't think that there's anything wrong with that. You know, that's their discretion. But we think that we'd be better served with a portfolio manager that is taking a long-term time horizon, which once was Highland but now not, given the bankruptcy case. And so, you know, we'd like to ask that -- and we're just -- we're really not -- we're not asking for a TRO. I think Mr. Morris (inaudible) a TRO. I understand that's their position. But I dispute it.

Highland is in bankruptcy, and so it's subject to the, you know, it's subject to the bankruptcy system and subject to the control of the Court. What we are asking would be for the Court to use its power under 363 and 1107 and 105 to tell

Highland rough -- for 30 -- within 30 days to figure out if they can replace you under the documents or if there can be a deal, as Mr. -- Mr. Bain mentions, there will be discussion of a (inaudible) to reach a consensual resolution in which the portfolio manager would change that would have to involve the CLOs and probably my clients and also the Debtor, probably, to see if we can get there. And, you know, if we can't, we can't. That's really the limited nature of what we're asking for now. It may be different than what you were describing in the Acis case. But again, I will go and read those cases and I will be prepared to address that more fully next week.

MR. POMERANTZ: I mean, Your Honor, this is Jeff Pomerantz, if I may briefly respond.

THE COURT: Go ahead.

MR. POMERANTZ: I think there's a fundamental problem with the argument that Mr. Wright just made. First of all, there are other investors and other people with interests in those CLOs. It's not Mr. Wright's clients only.

And also, the premise that the decisions that are being made in terms of liquidating those assets have to do with the Debtor's timeline on liquidation, just, you'll hear from Mr. Seery next week, is fundamentally incorrect. Mr. Seery is making decisions on behalf of Highland that he believes are within his fiduciary duty to the funds to maximize value.

So the whole premise of the argument that this is between

a long-term horizon and a short-term horizon is just incorrect. And there are other people that Mr. Seery has to worry about. He has a duty to the CLO, and just because one set of investors wanted to do certain things, they don't have that right. It's -- it's -- it wasn't lost on us that, in Mr. Wright's motion, he did not point to any language in any agreements that in any way give him that right.

So while we appreciate that these CLOs have to be addressed, and we have engaged in discussions with Mr. Wright's client and Mr. Bain's client to try to have a soft landing, they have not occurred yet. And in the interim, the Debtor has to do what it is obligated to do and act in a fiduciary manner and act consistent with the agreements. That's why we objected and we will be objecting to any moratorium on any of those efforts.

THE COURT: Okay. All right. So, Mr. Wright, I am also going to direct that you have a client witness to testify about these things. And I do want to understand, you know, who you're taking instructions from and who is on the board on these entities.

You know, we had a hearing before I think you were involved where the Committee was seeking discovery of documents, and a lot of the what I'm going to call Highland affiliates -- and I know people sometimes cringe when I use that word affiliates; you know, it may or may not meet the

Bankruptcy Code 101 definition of affiliate. But entities in the Highland umbrella, many of them resisted production of documents from the Committee. And I got concerned at that point in time of who is instructing the lawyers, because I felt like, in many instances -- not all, but in several instances -- you know, I was concerned it's in the estate's best interest to get these documents. You know, the Committee was the one seeking the documents, but we've got entities in the Highland umbrella resisting. And so it felt like there was a conflict. And if the same human beings were employees of the Debtor, and --

Anyway, I think we got through a lot of that, but I remember, in connection with all of that, looking at the list of Highland entities who filed proofs of claim in the bankruptcy case. And I remember asking, in some cases, like, who filed the proof of claim, and I was told that Mr. Dondero's counsel prepared a lot of these proofs of claim of the different entities. And at least signatories, I saw that Frank Waterhouse has signed the proofs of claim at least for NexPoint Advisors, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.

Anyway, we had a discussion about my concerns about conflicts back around that time, but here's what I'm getting at. I'm worried all over again about do we have any human beings involved calling the shots for your client, Mr. Wright,

that have fiduciary duties to the Debtor, and maybe this is getting in conflict with that. I just don't know. I just don't know. But it's concerning to the Court. So, what would help is if we have a human being testify for your clients so we can clear the air on that one. Okay?

So, next Wednesday, December 16th, at 1:30, we'll have a hearing on the Dondero motion and on these NexPoint motions of your client, Mr. Wright. And we're going to have a witness for Mr. Wright's client and we're going to have a witness -- and we're going to have Dondero being a witness. And Mr. Morris is going to upload your TRO, and we're going to have a follow-up hearing on January 4th on the preliminary injunction request.

All right. So, anything else?

MR. MORRIS: Yes, Your Honor. It's John Morris for the Debtor. I've got Mr. Seery on the phone, the Debtor's CEO --

THE COURT: Okay.

MR. MORRIS: -- and CRO. And if it pleases the Court, he would just like to spend a moment giving the Court an update as to where he is in the process.

THE COURT: Thank you. He may.

MR. MORRIS: Is that okay?

THE COURT: Uh-huh.

MR. MORRIS: Okay.

MR. SEERY: Thank you, Your Honor. Can you hear me?

THE COURT: Yes.

MR. SEERY: I appreciate the Court's time. I think with the overlapping motions it would be useful just to tick through very quickly, not to take too much of your time, where we are and why some of these things have come before you in the last couple days.

First, as you're aware, we have a plan out for a vote. We believe we're going to get confirmed. We believe we'll get the votes. We're still waiting on the votes. And we're still working on claims. So, as we speak, including even this morning, trying to resolve certain of the other open claims.

The Debtor is still managing its assets. And what that means is we're addressing financing with underlying assets that are in portfolio companies. We are addressing our own debtor-owned assets, some of which we are selling in the ordinary course. So, for example, securities. Where we have securities in an account, we have been selling those where we think the market opportunity was ripe.

Up until mid-March, Mr. Dondero controlled those accounts. He was the portfolio manager. We took them away after they lost considerable amounts of money, about ninety million bucks. Real money. So we took over control of those accounts since then, and we've been managing to sell them down to create cash where we think the market opportunity is correct.

With respect to subsidiaries, we don't have any plans to sell any PV assets now. These are companies that are part-owned, either directly or indirectly, through subsidiaries, with a number of other (inaudible) who are interest holders.

SSP, for example, there's been a lot of noise this morning, no real facts. I will tell you that we did sell SSP. We did it in conjunction, as Mr. Clemente indicated, with the Committee. We looked at number of bids. That entity was a private-equity-owned asset. We believe that it was sold appropriately. It wasn't selling an asset of the estate. It was actually a thrice-removed asset, also with other interest holders, including mostly completely independent, including SIBC -- SBIC owners who wanted to choose off that asset as well. We believe we got a very good price and executed that well. Happy to litigate and defend that at any time.

The CLOs, we're the manager of the CLOs. What we're trying to do in our plan is assign CLOs back to NexPoint Advisors. The reason for that is, while they do generate income, we didn't believe that the income was enough to justify us maintaining them. They would not be assets that we would continue to hold through the case. Or through the liquidation. Unclear whether NexPoint wants those assets now back or not. We have been working, as Mr. Bain indicated, closely with the Issuers and the Issuers' counsel, because there's very particular, specific ways to deal with those

assets under the documents that protect the various investors. As Mr. Morris pointed out, entities related, controlled by, managed by Mr. Dondero are not the only investors in these CLOs. Our duty is to the CLOs. We believe that we are adhering to that duty. We are happy to at some day litigate that.

With respect to asset sales, the Debtor has a team that manages these assets. The team came to me to sell certain assets. Mr. Dondero, NexPoint Advisors, they don't monitor these assets. They don't know anything about them. The assets we're talking about are loans, though the Debtor hasn't sold any of those, or securities that trade, equity securities that trade in the liquid markets. These are securities, you can go on the screen, you can go on Yahoo Finance and see how they trade.

Our team came to us and suggested that we sell some. I sat down with the analyst and the analyst suggested we sell. The manager of the day-to-day operations of CLOs suggested we sell. We set the sell notice within the context of the market. This wasn't a dumping. We thought that the market would support what we were doing, and it did.

Another asset that we were going to sell is an asset we don't have an analyst on. Haven't had one for years, apparently. It's not very much money. Mr. Dondero's related entities don't hold very much of the interests in the CLOs

that have that. They have debt which is owned by third parties. It's a good trade, in our opinion. Our analysis was it made sense to sell it within the context of the market. The Equity has no decision as to whether we do that. We're the manager.

Mr. Wright's example and his offer is, frankly, silly. If those public funds want to indemnify the Debtor and CLOs for any potential losses, that would be great, we can do that, we can talk about that, how to arrange that.

As to the pot plan, nobody has worked harder on the pot plan -- and I include Mr. Dondero -- than I have. Nobody. I didn't do it because I was trying to help Mr. Dondero. I thought it would be in the best interest of the estate, which means the creditors, the employees, and the investors whose funds we manage, to try to get a consensual deal done. So far, we've been unable to do that. In my declaration, there's a footnote. Not only did I help work on the idea, I actually drafted the term sheet. (inaudible) to do it, I presented it to the Creditors' Committee. Not that I wanted to do it. I thought they should do it. I did it. No one has worked harder for that.

The employees, unbelievably frustrated to hear that. Mr. Dondero put this company into bankruptcy. Our management of this estate has required that we fight with a lot of folks about keeping the team together. Again, we did it, not so

much for the individual team members, but we thought that would be the best way to enhance value for the estate and it would encourage an alternative plan that could be value-maximizing.

The employees have deferred compensation. That was all set up by Mr. Dondero. The money that was taken out and used in this -- by this company for other things rather than paying employees cash on a regular basis was used by Mr. Dondero well before I ever came into this case. If there are repercussions to employees because we are liquidating this entity or monetizing these assets, and because we have to do it through this vehicle, Mr. Dondero can stay in the mirror and not abort. It's very insulting and frustrating to hear that from counsel, who doesn't understand a thing about what we've done to try to keep the business together.

The CLO part of the business, we'd like to assign. We would like to assign as many of the employees over to help manage the business and have those go to Mr. Dondero's entities. And that's fine with us. You know, that is a concrete benefit to him, because it's also beneficial to the estate. We're not in the anger business. We are independent. The only thing that makes us angry is that when somebody just makes up noise, not facts, just statements that have no basis in reality of what's happened in this case, when we're trying to hold it together and come to a conclusion.

Sorry if I sound frustrated, Your Honor, because I really am, and I thought you should see that going forward before we go into next week. If the NexPoint entities want the CLOs, let's just work on that transfer. We have Mr. Bain and his clients. They are very good. They are CLO specialists. His co-counsel at Schulte is renowned in this space. We will work through it and make sure it works for the Issuers, make sure it works for NexPoint, and of course make sure it works for the estate.

Thank you, Your Honor.

THE COURT: All right. Mr. Seery, I really appreciate these comments. They've been very helpful to my thinking. In fact, I want to make sure it's under oath in case I ever want to take judicial notice of anything you've said just now. Do you solemnly swear or affirm that the statements you made were true and correct today, so help you God?

MR. SEERY: I do, Your Honor.

THE COURT: All right.

MR. SEERY: And just to be clear, if I ever make a statement to the Court, I consider it under oath.

THE COURT: Okay. Thank you. I appreciate that.

All right. So, again, I feel like that was so very helpful. And, you know, this is a precise example of why I am directing, if Mr. Dondero is going to urge a position with the

Court next Wednesday, he needs to testify. And if NexPoint, through whoever their decision-maker is, is wanting to urge a position to the Court, they need a human being to testify. And I'll hear Seery and I'll hear Dondero and I'll hear whoever that person is, and that's what's going to matter, you know, most to me. Yeah, we have some legal issues, certainly, but I like to hear business people explain things, no offense to the lawyers. But it's always very helpful to hear the business people in addition to the lawyers. All right. So, Mr. Morris, you're going to upload that TRO for me.

MR. MORRIS: Yes, Your Honor.

THE COURT: Mr. Wright, you can upload your order setting your motion for hearing next Wednesday at 1:30. And I think we have our game plan for now. Anything else? All right. We're adjourned.

THE CLERK: All rise.

(Proceedings concluded at 11:33 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **12/11/2020**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

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
	Friday, January 8, 2021
	9:30 a.m. Docket
Debtor.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 20-3190-sgj**
Plaintiff,	PRELIMINARY INJUNCTION HEARING [#2]
v.	
JAMES D. DONDERO,	
Defendant.	

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

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor/Plaintiff: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor/Plaintiff: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

Dondero Ex. 13

APPEARANCES, cont'd.:

For James Dondero, Defendant:	D. Michael Lynn John Y. Bonds, III Bryan C. Assink BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For the Funds and Advisors:	Davor Rukavina MUNSCH HARDT KOPF & HARR, P.C. 500 N. Akard Street, Suite 3800 Dallas, TX 75201-6659 (214) 855-7554
For Certain Employees:	Frances A. Smith ROSS & SMITH, P.C. Plaza of the Americas 700 N. Pearl Street, Suite 1610 Dallas, TX 75201 (214) 593-4976
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 - JANUARY 8, 2021 - 9:41 A.M.

THE COURT: All right. We are here for Highland Capital Management, L.P. versus James Dondero, a preliminary injunction hearing. This is Adversary 20-3190.

All right. Let's start out by getting appearances from counsel. First, for the Plaintiff/Debtor, who do we have appearing?

MR. MORRIS: Your Honor, John Morris; Pachulski Stang Ziehl & Jones. I'm here with my partner, Jeff Pomerantz, and others.

THE COURT: All right. Good morning. All right. For Mr. Dondero, who do we have appearing?

MR. LYNN: Michael Lynn, together with John Bonds, for Mr. Dondero.

THE COURT: Good morning.

All right. I know we have a lot of parties in interest represented on the video or phone today. I'm not going to go through a roll call, other than I'll see if we have the Committee, the Unsecured Creditors' Committee counsel on the line. Do we have anyone appearing for them?

MR. CLEMENTE: Yes, good morning, Your Honor. Matthew Clemente from Sidley Austin on behalf of the Committee.

THE COURT: Okay. Thank you. All right.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: Well, as I said, I'm not going to do a roll call. I don't think we had any specific parties in interest, you know, file a pleading, or any other parties other than the Debtor and Mr. Dondero in this adversary. So I'll just let the others kind of listen in without appearing.

All right. Mr. Morris, are you going to start us off this morning with, I don't know, an opening statement or any housekeeping matters?

MR. MORRIS: I have both an opening statement and housekeeping matters. I just wanted to see if Mr. Pomerantz has anything he wants to convey to the Court before I begin.

MR. POMERANTZ: (garbled)

THE COURT: Mr. Pomerantz, if you could take your device off mute, please.

THE CLERK: He's off mute. I don't know what --

THE COURT: Okay. Well, we're showing you're not on mute, but we can't hear you. What now?

THE CLERK: He's not on mute now. He's --

THE COURT: Okay. Go ahead, Mr. Pomerantz.

(Pause.)

THE CLERK: He's not coming through.

THE COURT: We're -- you're not coming through, and we're not sure what the problem is. We're not showing you on mute.

(Pause.)

THE COURT: All right. Should we have him call back in on his phone? All right. If you could, if you have a phone, maybe you can try calling in on your phone and speak through your phone, not your computer.

MR. MORRIS: You know what, Your Honor? I'm going to proceed, and Mr. Pomerantz will address the Court at the conclusion of the hearing on the motion.

THE COURT: Okay. Very good. We usually hear him loud and clear, so I don't know what's going on this morning. Go ahead, Mr. Morris.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MR. MORRIS: Yes. Thank you very much, Your Honor. John Morris; Pachulski Stang; for the Debtor.

We are here this morning, Your Honor, on the Debtor's motion for preliminary injunction against Mr. Dondero. We filed last night also an emergency motion for an order to show cause as to why this Court should not hold Mr. Dondero in contempt of court --

THE COURT: All right.

MR. MORRIS: -- for violating a previously-issued TRO.

THE COURT: Yes. Let me just interject, in case there's any confusion by anyone. I am not going to hear the motion for show cause order this morning. While I understand you think there might be some efficiency and overlap in

evidence, it's not enough notice. So we'll talk about scheduling that at the end of the presentations this morning. All right?

MR. MORRIS: Thank you for addressing that, Your Honor.

THE COURT: Okay.

MR. MORRIS: Your Honor, then let's just proceed right to the preliminary injunction motion. There is ample evidence to support the Debtor's motion for a preliminary injunction. There would have been substantial evidence to support it based on the conduct that occurred prior to the issuance of the TRO, but the conduct that did occur following the TRO only emphasizes the urgent need for an injunction in this case.

I want to begin by just telling Your Honor what evidence we intend to introduce here today. We filed at Docket 46 in the adversary proceeding our witness and exhibit list. The exhibit list contains Exhibits A through Y. And at the appropriate time, I will move for the admission into evidence of those exhibits.

The exhibit list and the witness list also identifies three witnesses for today. Mr. Dondero. Mr. Dondero is here today. Notwithstanding Your Honor's comments on December 10th and on December 16th, when I deposed him on Tuesday he was unsure whether he was going to come here today to testify.

And he will inform Your Honor of that on cross-examination. And so the Debtor was forced to prepare and serve a subpoena to make sure that he was here today. But Mr. Dondero is here today.

Following the conclusion of Mr. Dondero's deposition on Tuesday, and based in part on the evidence adduced during that deposition, the Debtor terminated for cause Scott Ellington and Isaac Leventon. We had asked counsel for those former employees to accept service of a trial subpoena so that they would appear today. We were told that they would do so if we gave them a copy of the transcript of Mr. Dondero's deposition.

We thought that was inappropriate and we declined to do so, and they declined to accept service of the subpoenas. We have spent two days with a professional process server attempting to effectuate service of the trial subpoenas for Mr. Ellington and Mr. Leventon, but we were unsuccessful in doing that. So we'll only have one witness today, unless we have cause to call anybody on rebuttal, and that witness will be Mr. Dondero.

I want to talk for a few moments as to what Mr. Dondero will testify to and what the evidence will show. Mr. Dondero will testify that he never read the TRO, Your Honor. He will testify that he didn't participate in the motion on the hearing for the TRO, that he never read Mr. Seery's

declaration in support of the Debtor's motion for the TRO, that he never bothered to read the transcript of the proceedings on December 10th so that he could understand the evidence that was being used against him. He had no knowledge of the terms of the TRO when he was deposed on Tuesday.

And that's the backdrop of what we're doing here today, because he didn't know what he was enjoined from doing, other than speaking to employees. He actually did testify and he will testify that he knew he wasn't supposed to speak with the Debtor's employees, but he spoke with the Debtor's employees in all kinds of ways, as the evidence will show.

The evidence will also show that Mr. Dondero violated the TRO by throwing away the cell phone that the company bought and paid for after the TRO was entered into. He's going to be unable to tell you who threw it away. He's going to be unable to tell you who gave the order to throw it away. He's going to be unable to tell you when after the TRO was entered the phone was thrown away.

But we do have as one fact and as I believe one violation of the TRO --

MR. POMERANTZ: So, I'm on a WebEx.

MR. MORRIS: Jeff, --

THE COURT: Mr. Pomerantz, we heard you. We heard you say something. So, apparently, you got your audio working.

All right. Mr. Morris, continue.

MR. MORRIS: Yeah. And what Mr. Dondero may tell you, Your Honor, is that it's really Mr. Seery's fault that the phone got thrown away, because Mr. Seery announced that all of the employees were going to be terminated at the end of January, and because Mr. Seery did that, he and I believe Mr. Ellington thought it was appropriate to just throw their phones away, without getting the Debtor's consent, without informing the Debtor, and switching the phone numbers that were in the Debtor's account to their own personal names. So that's Item No. 1.

Item No. 2 -- and this is in no particular order, Your Honor. I don't want you to think that I'm bringing these things up in terms of priority. But they're just the order in which they came up in the deposition, and so I'm just following it as well.

Item No. 2 is trespass. On December 22nd, you will hear evidence that Mr. Dondero personally intervened to yet again stop trades that Mr. Seery was trying to effectuate in his capacity as portfolio managers of the CLOs. He did that just six days after Your Honor dismissed as frivolous a motion brought by the very Advisors and Funds that he owns and controls.

Therefore, the very next day, the Debtor sent him a letter, sent through counsel a letter, evicting him from the

premises, demanding the return of the phone, and telling him that he had to be out by December 30th.

I was stunned, Your Honor, stunned, when I took his deposition on Tuesday and he was sitting in Highland's offices. He hadn't asked for permission to be there. He hadn't obtained consent to be there. But he just doesn't care what the Debtor has to say here. He just doesn't.

I don't know when he got there or when he left. I don't know if he spoke to anybody while he was there. But he just took it upon himself to show up in the Debtor's office, notwithstanding the very explicit eviction notice that he got on December 23rd.

Mr. Dondero, as I mentioned, clearly violated the TRO by knowingly and intentionally and purposely interfering with the Debtor's trading as the portfolio manager of the CLOs. This has just gone on too long. There have been multiple hearings on this matter, but he doesn't care. So he gave the order to stop trades that Mr. Seery had effectuated. That's a clear violation of the TRO, and it certainly supports the imposition of a preliminary injunction.

Mr. Seery -- Mr. Dondero is going to testify that multiple letters -- that I'm going to refer to them, Your Honor, as the K&L Gates Parties, and those are the two Advisors and the three investment funds and CLO Holdco that are all owned and/or controlled by Mr. Dondero -- after that hearing on the

16th, K&L Gates, the K&L Gates Parties sent not one, not two, but three separate letters. They said they may take steps to terminate the CLO management agreements. After we evicted Mr. Dondero, sent a letter suggesting that we would be held liable for damages because we were interfering with their business.

And Mr. Dondero is going to tell you, Your Honor, that he encouraged the sending of those letters, that he approved of those letters, that he thought those letters were the right things to send to the Debtor, even after -- even with the knowledge of what happened on December 16th.

He's going to tell you he knew about that hearing and he still, he still approves of those letters, and never bothered to exercise his control to have those letters withdrawn upon the Debtor's request. We asked them to withdraw it, and when they wouldn't do it, Your Honor, that's what prompted the filing of yet another adversary proceeding. And we're going to have another TRO hearing next Wednesday because they won't stop.

Next, a preliminary injunction should issue because Mr. Dondero violated the TRO by communicating with the Debtor's employees to coordinate their legal strategy against the Debtor. The evidence will show, in documents and in testimony, that on December 12th, while he was prohibited from speaking to any employee except in the context of shared services, you're going to see the documents and you're going

to hear the evidence that on December 12th Scott Ellington was actively involved in identifying a witness to support Mr. Dondero's interests at the December 16th hearing.

You will receive evidence that on December 15th Mr. Ellington and Mr. Leventon collaborated with Mr. Dondero's lawyers to prepare a common interest agreement.

You will hear evidence that on the next day, December 16th, the day of that hearing, that Mr. Dondero solicited Mr. Ellington's help to coordinate all of the lawyers representing Mr. Dondero's interests, telling Mr. Ellington that he needed to show leadership, and Mr. Ellington readily agreed to do just that.

You will hear evidence that on December 23rd Mr. Ellington and Grant Scott communicated in connection with calls that were being scheduled with Mr. Dondero and with K&L Gates, the very K&L Gates Clients who filed the frivolous motion that was heard on December 16th and that persisted in sending multiple letters threatening the Debtor thereafter.

You will hear evidence that late in December Mr. Dondero sought contact information for Mr. Ellington and Mr. Leventon's lawyer, and he will tell you that he did it for the explicit purpose of advancing their mutual shared interest agreement, while they were employed by the Debtor. While they were employed by the Debtor.

Finally, you will hear evidence, and it will not be

disputed, you will see the evidence, it's on the documents, that Mr. Dondero personally intervened to stop the Debtor from producing the financial statements of Get Good and Dugaboy, two entities that he controls, that the U.C.C. had been asking for for some time, that the Debtor had been asking of its employees for some time to produce. And it was only when we got, frankly, the discovery from Mr. Dondero when there's a text message that says, Not without a subpoena.

The documents are on the Debtor's system. We just don't know where they are because they're hidden someplace. But Mr. Dondero knows where they are. He can certainly force -- he can certainly get them produced. And one of the things we'll be asking for when we seek the contempt motion is the production of those very documents.

So, Your Honor, that's what the evidence is going to show. I don't think there's going to be any question that a preliminary injunction ought to issue. But I do want to spend just a few minutes rebutting some of the assertions made in the filing by Mr. Dondero last night.

Of course, they offer no evidence. There is no declaration. There is no document. There is merely argument. It's been that way throughout this case. For a year, Mr. Dondero has never stood before Your Honor to tell you why something was wrong being done to him, why -- he hasn't offered to be here at all, and he's here today, again, only

because he got a subpoena. That's the only reason we know he's here today.

So let's just spend a few minutes talking about the assertions made in the document last night. Mr. Dondero complains about the scope of the injunction, and I say to myself, in all seriousness, Are you kidding me? You didn't even read the TRO and you're going to be concerned about what the scope of the injunction is? You didn't even have enough respect for the Court to read the TRO and we're going to worry about the scope of some future injunction? Doesn't make any sense to me.

But let's talk about the specific arguments that they make.

Third parties. They're concerned that somehow third parties don't have notice of the injunction. Your Honor, third parties are not impacted by the injunction. The only third parties that are impacted by the injunction are those that are owned and/or controlled by Mr. Dondero. If he doesn't tell them, that's his breach of duty. He created the Byzantine empire of over 2,000 entities, and he wants the Debtor to have the burden of notifying all of them so that they can all come in here and make 2,000 arguments as to why they shouldn't be enjoined?

He owns and controls them. They are the only third parties who are impacted by this proposed preliminary

injunction, and he has the responsibility, he has the duty to inform them, because he owns and controls them.

We know of the K&L Gates Parties. We know Get Good and Dugaboy are in this courtroom. We know CLO Holdco. So many of these parties have been so -- they're on the phone now. They don't have notice? It is insulting, frankly, to suggest that the Debtor somehow has some obligation to figure out who Mr. Dondero owns and controls. He should know that. That's number one.

Number two, there is a statement in there about employees and how he should be able to speak with them about personal and routine matters. As to that, Your Honor, he has forfeited that opportunity. He cannot be trusted. There cannot be any communication because nobody can police it. And so we think a complete bar to any discussion with any employee, except as it relates to shared services -- because we do have a contractual obligation; that's what was in it -- ought to be barred. That's number one.

Number two, there's a reference in the objection to Mr. Dondero's personal assistant. I'd like to know who that is, Your Honor. I wasn't aware that he still was using a personal assistant at the Debtor. I want to know specifically who that is. I don't know that they -- you know, I just -- we need to cut that off. And he should not be communicating with any employee. The Debtor should not be paying for his personal

assistant.

It's offensive to think that he's still doing that, particularly after he was terminated or his resignation was requested back in October precisely because his interests were adverse to the Debtor.

Number three, he's concerned that the Debtor is somehow preventing him from speaking to former employees. We now know, Your Honor, that that's a, I'm sure, a very specific reference to Mr. Ellington and Mr. Leventon. Right? He wants a green light to be able to do that. And you know, I'll leave it to Your Honor as to whether that's appropriate. I'll leave it to their counsel as to whether, going forward, colluding together against the Debtor at this point in time is in anybody's best interest. But I will -- what I will demand in the preliminary injunction is a very explicit statement that Mr. Ellington and Mr. Leventon are not to share any confidential or privileged information that they received in their capacity as general counsel and assistant general counsel of the Debtor.

The pot plan. He's afraid somehow the order is going to prevent him from pursuing the pot plan. He's had over a year to pursue this pot plan, Your Honor. Frankly, I don't, you know, I don't know what to say. He has never made a proposal that has gotten any traction with the only people who matter. And it's not the Debtor. It's the creditors. It's the

Creditors' Committee.

If you want to put in an exception that he can call Matt Clemente, I don't mean to put this on Mr. Clemente, he can decide whether or not that's appropriate, but the creditors are the only ones who matter here. Your Honor, it's not the Debtor.

And I'll let Mr. Dondero's counsel explain to Your Honor why he thinks he still needs to pursue a pot plan, and Your Honor can decide. I trust Your Honor to decide what boundaries and what guardrails might be appropriate for him to continue to pursue his pot plan.

That's all I have, Your Honor. Not much.

THE COURT: All right.

MR. MORRIS: But I think there's going to be -- there's going to be an awful lot of evidence. This is going to be a lengthy examination. I ask the Court for your patience.

THE COURT: I've got --

MR. MORRIS: But that's all I have.

THE COURT: I've got all day, if we need it.

MR. MORRIS: Okay.

THE COURT: I hope we don't, but I've got all day if we need it. All right.

MR. MORRIS: That's what I have, Your Honor.

THE COURT: All right. Mr. Dondero's counsel, your

opening statement?

MR. BONDS: Your Honor, I would reserve my opening statement to the end of the hearing.

I would also point out that anything that Mr. Morris just said was not evidence, and we think that the evidence will show completely differently than argued or articulated by Mr. Morris.

THE COURT: All right.

MR. BONDS: That's all.

THE COURT: Thank you, Mr. Bonds.

Mr. Morris, you may call your witness.

MR. MORRIS: The Debtor calls James Dondero.

THE COURT: All right. Mr. Dondero, this is Judge Jernigan. I would ask you to say, "Testing, one, two," so we pick up your video so I can swear you in.

All right. Mr. Dondero, if you're speaking up, we're not hearing you, so please make sure you're unmuted and have your video --

(Echoing.)

MR. DONDERO: Hello. One, two.

THE COURT: Okay. We got you.

MR. DONDERO: One, two three.

THE COURT: We got you now.

JAMES D. DONDERO, PLAINTIFF'S WITNESS, SWORN

THE COURT: All right. Thank you.

Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

(Echoing.)

THE COURT: I'm going to ask everyone except Mr. Dondero and Mr. Morris to put your device on mute. We're getting a little distortion.

All right. Go ahead.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero. Can you hear me?

A Yes.

(Echoing.)

THE COURT: Ooh. Okay. We're having a little echo when you speak, Mr. Dondero. Do you have -- well, first, you have headphones. That always helps.

(Echoing.)

THE COURT: Okay. That may help as well.

(Pause.)

THE COURT: Okay. Let's try again. If you could say, "Testing, one, two."

THE WITNESS: Is that better?

THE COURT: That is better, yes.

All right. Go ahead.

THE WITNESS: Okay. Great.

MR. MORRIS: Thank you.

BY MR. MORRIS:

Q Can you hear me, Mr. Dondero?

A You're a bit faint. Give me one second. Okay. Got you.

Q Okay. Thank you. Who is in the room with you right now?

A Bonds, Lynn, and a tech.

A VOICE: Bryan Assink.

THE WITNESS: Oh, is Assink here? Oh, okay, I'm sorry. All right. I'm sorry. Bonds, Lynn, and Bryan Assink.

BY MR. MORRIS:

Q Okay. You're testifying today pursuant to a subpoena, correct?

A Yes.

Q Okay.

MR. MORRIS: And Your Honor, that subpoena can be found at Docket No. 44 in the adversary proceeding.

THE COURT: All right.

BY MR. MORRIS:

Q In the absence of a subpoena, in the absence of a subpoena, you didn't know if you would show up to testify at this hearing; is that right?

A I -- I do what my counsel directs me to do, and I didn't know at that time whether they would direct me to come or not.

Q Okay. And when I -- when I deposed you earlier this week, you agreed that you may or may not testify; is that right?

A It depends on what counsel instructs me to do, correct. I

didn't know at the time.
Q Okay. And you didn't mention anything about counsel when I asked you the questions earlier this week, correct?
A That was the undertone in almost all my answers, that I relied on counsel.
MR. MORRIS: Your Honor, I move to strike. I'm asking very specific questions. And if I need to go to the deposition transcript, I'm happy to do that.
THE COURT: All --
MR. MORRIS: Just going forward, Your Honor, this is cross-examination. It's really yes or no at this point. That's what I would request, anyway.
THE COURT: All right. Mr. Dondero, do you understand --
(Echoing.)
THE COURT: Do you understand what Mr. Morris was raising there? We really need you to give specific answers -- and usually they're going to be yes or no answers -- to Mr. Morris's questioning. Okay? So let's try again. Mr. Morris, go ahead.
THE WITNESS: Yeah.
BY MR. MORRIS:
Q Mr. Dondero, you're aware that Judge Jernigan granted the Debtor's request for a TRO against you on December 10th, correct?

A Yes.
Q But you never reviewed the declaration that Mr. Seery filed in support of the Debtor's motion for a TRO, correct?
A I relied on counsel.
Q Sir, you never reviewed the declaration that Mr. Seery filed in support of the Debtor's motion for a TRO, correct?
A Correct.
Q You didn't even know the substance of what Mr. Seery alleged in his declaration at the time that I deposed you on Tuesday, correct?
A Correct.
Q And that's because you didn't even think about the fact that the Debtor was seeking a TRO against you; isn't that right?
A No.
Q That's not right?
A No.
Q All right.

MR. MORRIS: Your Honor, could I ask my assistant, Ms. Canty, to put up on the screen what had been designated as the Debtor's Exhibit Z in connection with the motion for contempt? Exhibit Z is the transcript from Tuesday's hearing.

THE COURT: All right.

MR. MORRIS: And I would like to -- I'd like to cross-examine Mr. Dondero on his testimony on Tuesday.

THE COURT: All right. You may.

MR. MORRIS: Can we put up Page 15, please? And go to Lines 15 through 17.

BY MR. MORRIS:

Q Sir, you recall being deposed on Tuesday by my -- by me, correct?

A Yes.

Q Okay. Did you hear this question and did you hear this answer?

"Q Did you care that the Debtor was seeking a TRO against you?

"A I didn't think about it."

Q Is that -- is that your testimony from the other day?

A Yes.

Q You didn't dial in to the hearing when the Court considered the Debtor's motion for a TRO against you, did you?

A I -- I don't recall. I don't think so.

Q You never read the transcript in order to understand what took place in this courtroom when Judge Jernigan decided to enter a TRO against you; isn't that right?

A I relied on counsel, which has been my testimony all along.

MR. MORRIS: Can we go to Page 13 of the transcript, please? Beginning at Line 24.

BY MR. MORRIS:

Q (reading)

"Q Did you read a transcript of the hearing?

"A No."

Q Did you testify on Tuesday that you did not read a transcript of the hearing?

A Yes.

Q In fact, as of at least last Tuesday, you hadn't even bothered to read the TRO that this Court entered against you. Isn't that right?

MR. BONDS: Your Honor, I'm going to object.

(Echoing.)

THE COURT: Okay. We're getting that echo from you now, Mr. Bonds. So maybe you need to turn your volume down a little. But what is the basis for your objection?

(Echoing.)

MR. BONDS: Leading and rhetorical.

MR. MORRIS: I think it's because they're in the same room.

THE COURT: Okay. Do you have -- I don't know what you're doing. I guess you're moving to a different room?

MR. BONDS: I am, Your Honor.

THE COURT: Okay.

(Echoing.)

THE COURT: Okay. I'm waiting for the objection basis.

MR. BONDS: The basis of the objection, Your Honor, is that --

(Echoing.)

THE COURT: Okay. We're going to have to do something different here. We can't have this issue for the entire hearing. Do you need to get a tech person in there, or maybe call in on your phone? I don't know.

MR. BONDS: Your Honor, I'm going into the conference room.

(Pause.)

THE COURT: Okay. Are we going to try again here?

MR. BONDS: Yes. Is this working?

THE COURT: Yes.

MR. BONDS: Perfect. Your Honor, my objection is that Mr. Dondero has already testified that he relied on his lawyers. I don't know where Mr. Morris is going with this, but it's pretty clear that Mr. Dondero simply relies on his lawyers to tell him what happened. I don't know that that's that different than any other layperson.

MR. MORRIS: Your Honor, if this is --

THE COURT: Well, --

MR. MORRIS: If I may?

THE COURT: Yes.

MR. MORRIS: I believe it's terribly relevant to know how seriously Mr. Dondero takes this Court and this Court's

proceedings and this Court's orders. If the Court decides that it doesn't matter whether or not he read the transcript, you're the fact-finder and you'll make that decision. But I believe it's at least relevant.

THE COURT: Okay. I agree and I overrule the objection.

Go ahead.

BY MR. MORRIS:

Q Mr. Dondero, as of at least Tuesday, you never bothered to read the TRO that was entered against you, correct?

A I'm sorry. We're dealing with some tech stuff here for a second. Can you repeat the question?

Q Yes.

(Echoing.)

Q As of Tuesday, you had not bothered to read the TRO that was entered against you?

(Echoing.)

MR. MORRIS: Your Honor, can we take a break? I can't do this. I just --

THE COURT: Okay. I agree. Okay. Mr. Bonds, what do we need to do to fix these technical problems? Do I need to get my IT guy in here and help you? This is terrible. This connection is terrible. And I understand people have technical problems sometimes, but we've been doing these video hearings since March, so --

MR. BONDS: Your Honor, I have simply gone to another conference room. The Debtor (garbled) I think that Mr. Dondero should be fine.

THE COURT: Okay. I don't know what you said except that you think Mr. Dondero should be fine. I --

MR. MORRIS: Is there anybody in that room with a cell phone on, Mr. Dondero?

THE WITNESS: No.

MR. BONDS: And I'm completely over in --

THE COURT: Okay.

MR. MORRIS: Can I try and proceed?

THE COURT: Try to proceed.

MR. MORRIS: Okay.

(Echoing.)

BY MR. MORRIS:

Q Mr. Dondero, as of Tuesday you only had a general view of what this Court restrained you from doing; is that correct?

(Echoing.)

MR. MORRIS: I'd still -- I -- there's too much noise, Your Honor. I can't do it.

THE COURT: Okay. We're going to take a five-minute break. Mr. Bonds, can you get a technical person there to work through these problems?

And Mike, let's get Bruce up here to --

THE CLERK: It's because they're in the same room.

That's the problem.

THE COURT: They're -- they're --

THE CLERK: Judge Jernigan, this is Traci. Bruce is on his way up there.

THE COURT: Thank you.

Mike, explain it to me, because I don't understand. You're saying if they have two devices on in the same room?

THE CLERK: The same -- that's the problem. They're so close. And they're trying to use the same device, give it back to you.

A VOICE: He has a phone on in the room.

MR. MORRIS: I asked that question.

THE COURT: Okay.

MR. MORRIS: Please instruct the witness to exclude everybody from the room, to turn off all electronic devices except the device that's being used for this (garbled). At least have --

THE COURT: All right. So, the consensus of more technical people than me is you've got two devices on in the same room and that's what's causing the distortion and echo. So I don't know if it's somebody's phone that needs to be turned off or if you have two iPads or laptops.

(Court confers with Clerk.)

(Pause.)

MR. BONDS: I think I'm unmuted. Can people hear me?

THE WITNESS: Yes.

(Pause.)

THE COURT: Okay. Bruce, can you walk their office through? They have, I think, two devices in the same room. It's a horrible echo. So, Mr. Bonds or some --

MR. BONDS: Yes, Your Honor.

THE COURT: We have a lawyer and the lawyer's client who is testifying right now in the same room.

I.T. STAFF: Uh-huh.

THE COURT: And --

I.T. STAFF: Yeah. Yeah. Because -- is one a call-in user on a telephone?

THE COURT: I don't know. I don't --

I.T. STAFF: Yeah. Whatever's coming -- the audio is feeding back in. They need to separate if they're both on. Or just use one and the attorney can slide over and the client can --

THE COURT: Okay.

I.T. STAFF: -- go in his place. Just use one --

THE COURT: Our IT person is confirming what everyone else has been saying, that you really can only have one device in the same room. It's just unavoidable, the echoing.

I.T. STAFF: Unless everybody has --

THE COURT: Unless everyone has headphones on.

I.T. STAFF: Right.

THE COURT: So we either need everyone to have headphones on, or one device in the room. And you all, awkward as it is, just have to share. Or I guess you could have two laptops, but one person has to --

I.T. STAFF: Has to have a headset.

THE COURT: Has to --

I.T. STAFF: Because the other one, the audio is going to be feeing into the microphone of the other one.

THE COURT: Okay. So, Mr. Bonds, I don't know if you've heard any of that, but --

THE CLERK: He needs to unmute himself.

THE COURT: You're on mute, Mr. Bonds.

MR. BONDS: I'm sorry, Your Honor. I'm going to sit next to Mr. Dondero and answer any questions that may come up.

THE COURT: Okay.

MR. BONDS: If any objections --

THE COURT: Okay. So we're going to have one device?

MR. BONDS: Yes.

THE COURT: Okay. Let's try again.

Okay. Go ahead, Mr. Morris.

BY MR. MORRIS:

Q Mr. Dondero, is Mr. Ellington listening to this hearing?

THE COURT: I didn't hear you, Mr. Morris. What?

BY MR. MORRIS:

Q Mr. Dondero, is Mr. Ellington listening to this hearing?

A I have no idea.
Q Is Mr. Leventon listening to this hearing?
A I have no idea. I haven't spoken with him.
Q Okay. So let's try again. At least as of today, you never bothered to read the TRO that was entered against you, correct?
A Correct.
Q As of Tuesday, you only had a general understanding of what the Court restrained you from doing, correct?
(Echoing.)
A I had an adequate understanding.
Q You had a what?
A Adequate understanding.
Q Your understanding --
A VOICE: Your Honor?
BY MR. MORRIS:
Q -- was that you were prohibited from speaking to the Debtor's board without counsel and from speaking to the Debtor's employees; is that right?
A No.
Q Okay.
MR. MORRIS: Can we go to Page 13, Line 8, please?
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
"Q Tell me your understanding of what the temporary

restraining order restrains you from doing.

"A To talk to Independent Board directly or talking directly with employees.

"Q Is there any other aspect of the temporary restraining order that you're aware of that would otherwise constrain or restrain your conduct?

"A Those are the points I (garbled)."

Q Did you give those answers to the questions that I asked?

A Yes.

Q And even with that general understanding, you went ahead and communicated directly (garbled) employees many, many, many times after the TRO was entered?

A Only with regard to shared services, pot plan, and Ellington, the settlement counsel.

Q Does the restraining order permit you to speak with Debtor's employees about the pot plan?

(Echoing.)

THE COURT: Mr. Morris, let me stop.

MR. MORRIS: Yeah. I appreciate that, Your Honor.

THE COURT: Even --

MR. MORRIS: It's not working.

THE COURT: Even your sound is not coming through clearly. And I think it's the echo coming out of their speakers, Mr. Dondero and Mr. Bonds' speakers. But before we conclude that, would you turn off your video and ask your

question again and see if it's any better, just to confirm it's not a bandwidth issue on your end? I doubt it is, but -- okay. So, try asking your question again, and I'm going to see if it's still distorted.

BY MR. MORRIS:

Q There's nothing in the TRO that permitted you to speak with Debtor employees about the pot plan, correct?

THE COURT: Okay. Mr. Morris, it's not at your end. It's -- it's their end. Okay. So you can turn your video back on.

Mr. Bonds?

MR. BONDS: Yes, ma'am.

THE COURT: You all are going to have to use earbuds, apparently. We're getting -- we're getting a feedback loop, okay? Whenever Mr. Morris talks or I talk, we're hearing ourselves echo through your speakers.

MR. BONDS: Can you check right now to see if it's true, if we're experiencing the same problem?

THE WITNESS: In other words, is this better? We unplugged the cord here.

THE COURT: Well, when you all speak, it's -- it's better now. But when --

MR. MORRIS: It is better.

THE COURT: But when Mr. Morris asks a question, it's echoing through your speakers. But I don't hear myself

echoing through your speakers.

I.T. STAFF: Can Mr. Morris say something, please?

THE COURT: Mr. Morris, say something.

MR. MORRIS: They may have solved the problem. They may have solved the problem. How's that?

THE COURT: Okay. I think the problem is solved, whatever you did, so let's try once again.

Go ahead, Mr. Morris. Repeat your last question. I didn't hear it.

BY MR. MORRIS:

Q Mr. Dondero, the temporary restraining order doesn't permit you to speak with the Debtor's employees about a pot plan; isn't that right?

A There was a presentation on the pot plan given to the Independent Board after the restraining order was put in place. What are you implying, that that wasn't proper?

MR. MORRIS: Your Honor, I move to strike. It's a very simple question.

THE COURT: Okay. Sustained. If you could just answer the specific question, Mr. Dondero.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q Fair enough. Sir, let's talk about some of the events that led up to the imposition of the TRO. I appreciate the fact that you hadn't read Mr. Seery's declaration or any of

the evidence that was submitted in connection with the TRO, so let's spend some time talking about that now. CLO stands for Collateralized Loan Obligation, correct?

A Yes.

Q And the Debtor is party to certain contracts that give it the exclusive right and responsibility to manage certain CLOs, correct?

A Yes.

Q NexPoint Advisors, LP is an advisory firm. Do I have that right?

A Yes.

Q And we can refer to that, that firm, as NexPoint; is that fair?

A Yes.

Q You have a direct or indirect ownership interest in NexPoint, correct?

A Yes.

Q You're the president of NexPoint; isn't that right?

A Yes.

Q And as the president of NexPoint, it's fair to say that you control that entity, correct?

A To a certain extent.

Q Sir, as the president of NexPoint, it's fair to say that you control that entity, correct?

A To a certain extent.

MR. MORRIS: Can we go to Page 18 of the transcript, please? Lines 19 and 21.

BY MR. MORRIS:

Q Were you asked this question and did you give this answer?

"Q As the president of NexPoint, it's fair to say that you control that entity?

"A Generally."

Q Is that the right answer that you gave the other day?

A I think it's similar to what I just said, yeah, yeah.

Q Sir, you're familiar with Highland Capital Management Fund Advisors, LP; is that right?

A Yes.

Q And we'll call that Fund Advisors; is that fair?

A Yes.

Q And we'll refer to Fund Advisors and NexPoint together as the Advisors; is that okay?

A Yes.

Q Fund Advisors is also an advisory firm, correct?

A Yes.

Q You have a direct or indirect ownership interest in Fund Advisors, correct?

A Yes.

Q You're the president of Fund Advisors, correct?

A Yes.

Q And you also have an ownership interest in the general

partner of Fund Advisors; isn't that right?
A I believe so.
Q It's fair to say that you control Fund Advisors, correct?
A Generally.
Q NexPoint and Fund Advisors manage certain investments funds; is that right?
A Yes.
Q Among the funds that they manage are High Point Income Fund; is that right?
A I don't think that's a name that we manage.
Q Let's put it this way. There are three funds that are represented by K&L Gates that are managed by the Advisors, correct?
A I don't know.
Q Okay. You're the portfolio manager of the investment funds advised by NexPoint and Fund Advisors, correct?
A Largely.
Q And NexPoint and Fund Advisors caused the investment funds that they manage to invest in CLOs that are managed by the Debtors, correct?
A Years ago, they bought the equity interests, if that -- if that's what you're asking me, in various CLOs.
Q The two Advisors that you own and control caused the investment funds to purchase interests in CLOs that are managed by the Debtor, correct?

A Not recently. Not recently. Years ago. Yes.
Q And they still hold those interests today, correct?
A Yes.
Q And K&L Gates represents all of those entities, correct?
A Yes.
Q And we'll call those the K&L Gates Clients; is that fair?
A Yes.
Q Before the TRO was entered, the K&L Gates Clients sent two letters to the Debtor concerning the Debtor's management of certain CLOs, right?
A Yes.
Q Okay.

MR. MORRIS: Your Honor, I just want to take a moment now, because we're going to start to look at some documents. The Debtor would respectfully move into evidence Exhibits A through Y that are on their exhibit list.

THE COURT: All right.

MR. BONDS: Your Honor, we have no objection.

THE COURT: A through Y are admitted. And for the record, these appear at Docket No. 46 in this adversary.

(Plaintiff's Exhibits A through Y are received into evidence.)

MR. MORRIS: Okay. Can we please put up Exhibit B as in boy? (Pause.) Ms. Canty? If you need a moment, just let us know.

MS. CANTY: Yeah. I'm pulling it up right now.

MR. MORRIS: Thank you. (Pause.) Can you scroll down just a bit?

BY MR. MORRIS:

Q All right. Can you see this letter was sent on October 16th?

A Yes.

Q And we see the entities that are reflected on this letter. We've got Highland Capital Management, LP. That's the question that they're asking. And the questions and the statements are being asserted on behalf of NexPoint Advisors, LP. Do you see that?

A Yes.

Q And Highland Capital Management Fund Advisors, LP. Those are the two Advisors that you own and control, correct?

A Control to a large extent.

Q Okay.

MR. MORRIS: And can we put up Exhibit C, please?

BY MR. MORRIS:

Q This is a second letter sent by NexPoint on November 24th. Do you see that?

A Yes.

Q Okay. And you're familiar with the substance of these letters, correct?

A Yes.

Q And you were familiar -- you were aware of these letters before they were sent. Is that correct?
A Yes.
Q And you generally discussed the substance of these letters with NexPoint; is that right?
A Generally, yes.
Q And you discussed the substance of the letters with the Advisors' internal counsel; is that right?
A Yes.
Q That's D.C. Sauter?
A Yes.
Q And you have been on some calls with K&L Gates about these letters, right?
A I believe so.
Q And you knew these letters were being sent, correct?
A Yeah, they're -- they're reported.
Q You knew these letters for being sent; isn't that right, sir?
A Yes.
Q And you didn't object to the sending of these letters, correct?
A No.
Q In fact, you supported the sending of these letters. Is that right?
A Yes.

Q And you have never directed NexPoint to withdraw these letters, correct?
A No.
Q Around Thanksgiving, you learned that Mr. Seery had given a direction to sell certain securities owned by the CLOs managed by the Debtors, correct?
A Yes.
Q And when you learned that, you personally intervened to stop the trades, correct?
A Yes. I believe they were inappropriate.
MR. MORRIS: I move to strike the latter part of the answer, Your Honor.
THE COURT: It's stricken.
MR. MORRIS: Can we put up Exhibit D, please?
BY MR. MORRIS:
Q We looked at this email string the other day. Do you recall that?
A Yes.
MR. MORRIS: Can we start at the bottom, please?
BY MR. MORRIS:
Q There's an email from Hunter Covitz. Do you see that?
A Yes.
Q Now, this is November 24th. It's before the TRO. Is that fair?
A Yes.

Q Mr. Covitz is an employee of the Debtor, right?
A I believe so.
Q And Mr. Covitz helps manage the CLOs on behalf of the Debtor. Is that your understanding?
A Yes.
Q And Mr. Covitz in this email is giving directions to Matt Pearson and Joe Sowin to sell certain securities held by the CLOs. Is that correct?
A No. He's giving Jim Seery's direction.
MR. BONDS: And Your Honor, I'm going to object. This is all before the TRO was ever entered. It doesn't have anything to do with today's hearing.
THE COURT: Overruled.
MR. MORRIS: May I respond, Your Honor?
THE COURT: I --
MR. MORRIS: Okay. Thank you.
THE COURT: I think it's relevant. Go ahead.
MR. MORRIS: Thank you. Okay.
BY MR. MORRIS:
Q Mr. Seery is the CEO of the Debtor; is that right?
A Yes.
Q And the Debtor is the contractual party with the CLOs charged with the exclusive responsibility of managing the CLOs, correct?
A I don't believe so. The Debtor is in default of the

agreements.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Sir, the Debtor has the exclusive contractual right and obligation to manage the CLOs, correct?

A I don't agree with that.

Q Okay.

MR. MORRIS: Can we scroll up to the -- just --

BY MR. MORRIS:

Q Do you see that Mr. Pearson acknowledges receipt of Mr. Covitz's email?

A Yes.

Q And you received a copy of Mr. Covitz's email, did you -- did you not?

A Yes.

MR. MORRIS: Can you scroll up a little bit, please?

BY MR. MORRIS:

Q And can you just read for Judge Jernigan your response that you provided to Mr. Pearson, Mr. Covitz, and Mr. Sowin on November 24th?

A (reading) No, do not.

Q You instructed the recipients of Mr. Covitz's email not to sell the SKY securities as had been specifically instructed by Mr. Seery, correct?

A Yes.
Q And you understood when you gave that instruction that the people on the email were trying to execute trades that Mr. Seery had authorized, correct?
A No. I -- no, that isn't how I would describe it.
MR. MORRIS: A second, Your Honor?
THE COURT: Okay.
(Pause.)
BY MR. MORRIS:
Q Sir, when you gave the instruction reflected in this email, you knew that you were stopping trades that were authorized and directed by Mr. Seery, correct?
A I don't think -- I -- I wasn't -- I wasn't sure at the moment I did that. I didn't find out until later that it was Seery who directed it.
MR. MORRIS: Can we please go back to the deposition transcript, Debtor's Exhibit Z, at Page 42? Line 12.
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
"Q At the time that you gave the instruction, "No, do not," you knew that you were stopping trades that had been authorized and directed by Mr. Seery, correct?
"A Yes."
Q Did you give that answer to my question on Tuesday?
A I'd like to clarify it, but yes, I did give that answer.

Q Okay. You didn't speak with Mr. Seery before sending your instructions interfering with his trade, the trades that he had authorized, correct?

A No, I did not.

Q And you took no steps to seek the Debtor's consent before instructing the recipients of your email to stop executing the SKY transactions that had been authorized by Mr. Seery, correct?

A I'm sorry. Can you repeat the question?

Q You took no steps to seek the Debtor's consent before stepping in to stop the trades that Mr. Seery had authorized, correct?

A I took other actions instead.

Q Okay. But you didn't seek the Debtor's consent? That's not one of the actions you took, right?

A No, I educated the traders as to why it was inappropriate.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Sir, did you seek the Debtor's consent before stepping in to stop the trades that Mr. Seery had authorized?

A No, I did not seek consent.

Q In response to your instruction, Mr. Pearson canceled all of the trades that Mr. Seery had authorized, correct?

A Yes.

MR. MORRIS: Can we go back to the exhibit, please? And if we could just scroll -- stop right there.

BY MR. MORRIS:

Q That's -- that's Mr. Pearson's response to your email, confirming that he had canceled both the SKY and the AVAYA trades that had not yet been executed, correct?

A Yes.

MR. MORRIS: Can we scroll to the response to that?

BY MR. MORRIS:

Q Is this your response?

A Yes.

Q Can you read that aloud, please?

A (reading) HFAM and DAF have instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again, please.

Q The writings that you're referring to are the two letters from NexPoint, Exhibits B and C that we just looked at, correct?

A Yeah. There might have been a third letter. I don't know. But, yes, generally, those letters.

Q Okay. And at this juncture, the reference to potential liability was a statement intended for Mr. Pearson. Is that correct?

A Um, I -- no. Pearson wouldn't have had any personal liability. It was -- it was meant for the -- there was

potential liability to the Debtor or to the compliance officers at the Debtor.

MR. MORRIS: Can we go to Page 45 of the deposition transcript, please? Line -- beginning at Line 11, through 18.

BY MR. MORRIS:

Q Did I ask these questions and did you give these answers?

"Q Do you see the reference there in the latter portion of your email, 'There is potential liability. Don't do it again'?

"A Yes.

"Q Who was the intended recipient of that message?

"A At this juncture, it's Matt Pearson, I believe."

Q Did you give those answers to my questions on Tuesday?

A Yeah. That's not inconsistent.

MR. MORRIS: Let's go back to the email, please.

BY MR. MORRIS:

Q Mr. Sowin responded to your email; is that right?

MR. MORRIS: Can we scroll up?

BY MR. MORRIS:

Q Okay. Who's Mr. Sowin?

A He's the head trader.

Q Who's he employed by?

A I believe he's employed by HFAM but not the Debtor.

Q Okay. So he's -- he's somebody who's employed by one of the Advisors; is that right?

A I believe so.
Q And Mr. Sowin responded to your email and he indicated that he would follow your instructions. Is that right?
A Yeah. He understands that it's inappropriate. That's what he's reflecting. Yes.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Sir, Mr. Sowin responded and indicated that he would follow your instructions, correct?
A (no audible response)
Q Did you answer? I'm sorry.
A No, I didn't answer. It's -- I don't know if you could expressly say that from that email. Maybe we should read the email.
MR. MORRIS: Let's just move on, Your Honor.
THE COURT: Okay.
BY MR. MORRIS:
Q A few days later, you learned -- you learned that Mr. Seery was trying a workaround to effectuate the trades anyway, correct?
A I believe so.
Q Uh-huh. And when you learned that, you wrote to Thomas Surgent; is that right?
A I -- I believe so.

Q I don't -- I don't mean to -- this is not a test here.

MR. MORRIS: Can we just scroll up to the next email, please? Okay. Stop right there.

BY MR. MORRIS:

Q When you -- when you learned that Mr. Seery was trying a workaround, you wrote to Mr. Surgent when you learned that, right?

A Yes.

Q And Mr. Surgent is an employee of the Debtor; is that correct?

A I believe he's still the chief compliance officer of the Debtor.

Q Okay. Now, as a factual matter, you never asked Mr. Seery why he wanted to make these trades; isn't that right?

A I -- I did not.

Q Okay. And before the TRO was entered, there was nothing that prevented you from picking up the phone and asking Mr. Seery why he wanted to make these trades, correct?

A That's not true.

MR. MORRIS: One second, please, Your Honor.

THE COURT: Okay.

(Pause.)

MR. MORRIS: Can we go to Page 60 of the transcript? Mr. Bonds says -- beginning at Line 14. There is an objection there, Your Honor, and I would ask that the Court rule on the

objection before I read from the transcript.

THE COURT: Okay.

MR. MORRIS: There you go.

THE COURT: (sotto voce) (reading) Is there anything that you're aware of that prevented you from picking up the phone and asking Mr. Seery for his business justification for these trades prior to December 10. Objection, form.

I overrule the objection to the form of that question.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Mr. Dondero, were you asked this question and did you give this answer?

"Q Is there anything that you're aware of that prevented you from picking up the phone and asking Mr. Seery for his business justification for these trades prior to December 10, 2010?

"A No. I expressed my disapproval via email."

Q Is that right?

A I'd like to adjust that answer to the answer I just gave.

Q Okay.

MR. MORRIS: And I move to strike.

BY MR. MORRIS:

Q I'm just asking you if that's the answer you gave on Tuesday.

THE COURT: Sustained.

THE WITNESS: Yes.

BY MR. MORRIS:

Q Thank you. Now, you wrote to Mr. Surgent because you wanted to remind him of his personal liability for regulatory breaches and for doing things that aren't in the best interest of investors, correct?

A Yes.

Q And you actually thought about this and you -- because you didn't believe that Mr. Surgent had extra insurance and indemnities like Mr. Seery, right?

A No.

Q Didn't you testify to that the other day?

A I don't remember, but that isn't the only reason.

Q I didn't ask you if it was the only reason. Listen carefully to my question. Did you send this email because you -- because you wanted to remind him of his personal liability for regulatory breaches and for doing things that aren't in the -- I apologize. Withdrawn.

You did not believe at the time that you sent this email that he, Mr. Surgent, had insurance and indemnities like Mr. Seery, correct?

A Yes.

Q Okay.

MR. MORRIS: Can we go back to the email, please?

BY MR. MORRIS:

Q Can you just read the entirety of your email to Mr. Surgent out loud?

A (reading) I understand Seery is working on a workaround to trade these securities anyway, trades that contradict investor desires and have no business purpose or investment rationale. You might want to remind him and yourself that the chief compliance officer has personal liability.

Q Okay. That's -- that's the message you wanted to convey to Mr. Surgent, right?

A Yes.

Q And, again, you never bothered to ask Mr. Seery what his businessperson -- purpose or investment rationale was, correct?

A I -- I didn't believe I could talk to him directly.

Q This is before the --

A That's why I never picked up the phone.

Q Okay. You intended to convey the message to Mr. Surgent that, by following Mr. Seery's orders to execute the trades, that Mr. Surgent faced personal liability, correct?

A Yes, he does.

Q And that's the message you wanted to send to him, right?

A It's a true and accurate message, yes.

Q Okay. Just a few days earlier, you also threatened Mr. Seery, right?

A I wouldn't use the word "threatened."
Q Okay. Let's let -- let's let it speak for itself.
MR. MORRIS: Can we go to Exhibit E, please? Keep scrolling down just a bit.
BY MR. MORRIS:
Q This is an email that you sent to Mr. Seery on November 24th. And as always, Mr. Dondero -- this is the third time we're meeting -- if there's something in the document that you need to see, please just let me know, because I don't -- I don't mean to test your memory if the document can help refresh your recollection.
MR. MORRIS: Can we just scroll up a little bit further to the top to see the date?
BY MR. MORRIS:
Q Okay. So, Jim, there, JD, who is that?
A That's me.
Q Okay. And can you tell by the substance of the email, of the text messages, this is communications between you and Mr. Seery, right?
A Yes.
Q Okay. And you see that it's dated November 24th there?
A Yes. Right after we were discussing the pipeline. Or right when we were working on the pipeline.
Q Okay.
MR. MORRIS: Can you scroll down a little bit,

please?
BY MR. MORRIS:
Q At 5:26 p.m., you sent Mr. Seery a text, correct?
A Yes.
Q Can you read that, please?
A (reading) Be careful what you do. Last warning.
Q Okay. This was a warning telling Mr. Seery to stop selling assets out of the CLOs or the beneficial owners would take more significant action against him, correct?
A It was a general statement that what he was doing was regulatorily inappropriate and ethically inappropriate and he was in breach of the contracts he was operating.
Q Neither you nor any entity owned or controlled by you are parties to the contracts you just referred to; isn't that correct?
A I believe they're indirectly parties to those contracts, especially when they're in default.
Q Neither you nor any entity owned or controlled by you is a signatory to any CLO management contract pursuant to which the Debtor is a party, correct?
A I -- I don't know and I don't want to make legal conclusions on that.
Q Okay. At the deposition the other day, some of the things that you suggested the beneficial owners of the CLO interests might do against Mr. Seery and the Debtor are class action

lawsuits. Is that right?
A I -- I did not suggest the entities I control would do that. If anybody on this call were to call a class action lawsuit -- a class action law firm and tell them what's been going on with the CLOs, I think a class action law firm would file it on their own regard, not on the behalf of my entities.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q Let's talk about that cell phone. Okay? Until at least December 10th, the day the TRO was entered, you had a cell phone that was bought and paid by the Debtor, right?
A Yes.
Q But sometime after December 10th, your phone was disposed of or thrown in the garbage; is that right?
A Yes.
Q And you don't know when after December 10th the cell phone that was the Debtor's property was disposed of, right?
A I don't believe at that point it was the Debtor's property. I think I paid it off in full and the Debtor had announced that they were canceling everybody's cell phones so it was appropriate for me to get another one.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
MR. BONDS: Your Honor, at some point, I mean, Mr.

Morris just ought to go on and testify.

MR. MORRIS: No, this is Mr. Dondero's testimony, Your Honor. He gave it the other day. I'm just asking him to confirm it, basically.

THE COURT: Okay. I overrule the objection, if any there was, on the part of Mr. Bonds.

BY MR. MORRIS:

Q Sometime after December 10th, the cell phone that prior to that time had been owned and paid for by the Debtor was thrown in the garbage or otherwise disposed of, correct?

A Yes.

Q And you don't know when after December 10th that was -- the phone was disposed of, correct?

A It was on or about that date, I'm sure.

Q Well, we know it was after December 10th, right?

A Okay. Or about that date.

Q You testified the other day that you just don't know who made the decision to throw your phone away, right?

A I could find out, but I don't know. I would have to talk to employees.

Q Did you make any request of the Debtor since your deposition to try to find out the answer as to who made the decision to throw your phone away?

A No.

Q How did you learn that your phone was thrown away?

A As I testified, it's standard operating procedures every time a senior executive gets a new phone.
Q Hmm. You don't know exactly who threw the phone away; is that right?
A No, but I can find out.
Q Okay. I'm just asking -- I'm not asking you to find out. I'm just asking you if you know. Do you know who threw your phone away?
A No.
Q Do you know who made the decision to throw your phone away?
A It -- there wasn't a decision. It was standard operating procedure.

MR. MORRIS: I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:
Q You and Mr. Ellington disposed of your phones at the same time, correct?
A I don't have specific awareness regarding what Mr. Ellington did with his phone.
Q It never occurred to you to get the Debtor's consent before throwing the phone that they had purchased away, right?
A I'm not permitted to talk to the Debtor.
Q Sir, it never occurred to you to get the Debtor's consent before throwing the phone away, correct?

A I'm going to stick with the answer I just gave.

MR. MORRIS: Can we go to Page 75 of the transcript? Lines 12 through 15. There is an objection there, Your Honor. I would respectfully request that the Court rule on the objection before I read the testimony.

THE COURT: Okay. Starting at Line 12?

MR. MORRIS: 12.

THE COURT: (sotto voce) (reading) Did it ever occur to you to get the Debtor's consent before doing this? Objection, form.

That objection is overruled.

BY MR. MORRIS:

Q All right. Mr. Dondero, did you give this answer to my question on Tuesday?

"Q Did it ever occur to you to get the Debtor's consent before doing this?

"A No."

A Yes, I gave that testimony.

Q Okay. And you also had the phone number changed from the Debtor's account to your own personal account; is that right?

A The phone number changed? The phone number stayed the same.

Q But you had the number changed from the Debtor's account to your own personal account, correct?

A The Debtor said they wouldn't pay for it anymore. Who

else could I change it to?

MR. MORRIS: Your Honor, I move to strike. It's a very simple question.

THE COURT: Sustained.

BY MR. MORRIS:

Q I'll ask it one more time, Mr. Dondero. You had the phone number changed from the Debtor's account to your personal account, correct?

A I didn't change the number. I had the billing changed to my personal account versus the company account.

Q And you never asked the Debtor for permission to do that, correct?

A No.

Q And you never told Debtor you were doing that, correct?

A No.

Q And nobody ever told Mr. Seery or anybody at my firm that the phone was being thrown in the garbage, correct?

A Well, --

MR. BONDS: To the extent he knows.

THE WITNESS: Yeah. I have no idea. But I didn't.

BY MR. MORRIS:

Q You didn't believe it was necessary to give the Debtor notice that you were taking the phone number for your own personal account and throwing the phone in the garbage, correct?

A Correct.
Q The phone --
MR. BONDS: Your Honor, I'm going to object. He -- Mr. Dondero did not testify he personally threw the phone in the garbage.
MR. MORRIS: Withdrawn.
THE COURT: Okay.
BY MR. MORRIS:
Q Mr. Dondero, the phone was in Highland's offices on December 10th, the date the TRO was in effect, correct?
A I -- I don't -- I -- I -- I don't know. You know, I don't know. It's -- I remember going over to -- well, anyway, I -- I don't know. We'll leave it at that.
MR. MORRIS: Can we go to Exhibit G, please?
BY MR. MORRIS:
Q Who's Jason Rothstein, while we wait?
A Jason, Jason is our -- is the Highland head of technology.
Q Okay. And did you text with him from time to time? On or about December 10th?
A Yes.
Q Okay.
MR. MORRIS: Can we just scroll up a little bit?
BY MR. MORRIS:
Q Is that Mr. Rothstein there?
A Yes. Yeah.

Q Okay. And do you see that there's a text message that you sent to him on December 10th, right at the top? Can you read -- can you read the text message Mr. Rothstein --

A He sent that to me. At the top.

Q I apologize. Thank you for the correction. Can you read what Mr. Rothstein told you on December 10th?

A That my old phone is in the top drawer of Tara's desk.

Q And who's Tara?

A My assistant.

Q Is she still your assistant today?

A Yes.

Q And has she been serving as your assistant since the TRO was entered into on December 10th?

A Yes.

Q Okay. Is it fair to say that you were informed on December 10th that the phone was not thrown in the garbage, had not been disposed of, but was instead sitting in Tara's desk?

A As of that moment, yes.

Q Okay. And it's also fair to say that, as of December 10th, Mr. Rothstein didn't take it upon himself to throw your old phone in the garbage, right?

A Not as of that moment. But like I said, I can find out how it was disposed of.

Q If you were curious to do that, would you have done that

before today?
A I haven't been curious.
Q Thank you very much. Someone you can't identify made the decision after December 10th to throw the phone in the garbage without asking the Debtor for permission or seeking the Debtor's consent, correct?
MR. BONDS: I'm going to object, Your Honor. To the extent that the witness knows, he can answer.
THE COURT: I -- I didn't hear --
THE WITNESS: I don't know.
THE COURT: I didn't hear what your objection was, Mr. Bonds. Repeat.
MR. BONDS: Your Honor, my objection was along the lines of to the extent that the witness knows, he could testify, but if he doesn't know, he doesn't need to speculate.
THE COURT: All right. Well, I don't hear an objection there, but go ahead, Mr. Dondero, if you have knowledge and can answer the question.
THE WITNESS: I don't know.
BY MR. MORRIS:
Q Do you recall that the Debtor subsequently gave notice to you to vacate its offices and to return its cell phone?
A I don't know.
Q Did you ever --
A I know I -- I know I was told to vacate the offices. I

didn't see the specific --

Q Uh-huh. Your lawyer -- your lawyers never told that Debtor that the cell phone had been disposed of or thrown in the garbage, consistent with company practice, right?

A I don't know.

MR. MORRIS: Can we put up Exhibit K, please?

BY MR. MORRIS:

Q This is the letter that my firm sent to your lawyer on December 23rd. Do you see that?

A Yeah, I see it.

Q Okay.

MR. MORRIS: Can we scroll down a little bit? Keep going. Okay. Stop right there.

BY MR. MORRIS:

Q Do you see that it says that, as a result of the conduct described above, that the Debtor "has concluded that Mr. Dondero's presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive"?

A Yeah, I see it.

Q And this is the letter that gave you notice that you had to vacate the premises by December 30th, correct?

A I believe so.

MR. MORRIS: Can we scroll down a little bit?

BY MR. MORRIS:

Q You see at the bottom there's a reference to a defined term of "cell phones"?
A Yes.
Q And it says that the Debtor "will also terminate Mr. Dondero's cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero." Do you see that?
A Yes. Yeah.
Q Have I read that accurately?
A Yes.
Q And then my colleagues went on to write, "HCMLP demands that Mr. Dondero immediately turn over the cell phones to HCMLP by delivering them to you, Mr. Lynn." Do you see that?
A Yes.
Q Have I read that accurately?
A Yes.
Q The last sentence on the page begins, "The cell phones and."

MR. MORRIS: And let's scroll down further.

BY MR. MORRIS:
Q "The cell phones and the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or wiping any information or messages on the cell phone. HCMLP, as the owner of the account and cell phones, intends to recover all information related to the cell phones and

accounts, and reserves the right to use the business-related information." Have I read that accurately?

A Yes.

Q Okay. We were a couple of weeks too late, huh?

A It sounds like it.

Q Yeah. Because the phones were already in the garbage, right?

A Yes.

Q Uh-huh. But that's not what Mr. Lynn told the Debtor on your behalf, right?

A I don't know.

Q Mr. Lynn -- all right. Let's -- let's see what Mr. Lynn said.

MR. MORRIS: Can we go to Exhibit U, please?

BY MR. MORRIS:

Q It took Mr. Lynn six days to write a one-paragraph letter in response, right? December 29th, he responded?

MR. MORRIS: Can we scroll down a bit?

BY MR. MORRIS:

Q Let me read beginning with the second sentence of the first substantive paragraph. "We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor, but we are not prepared to turn it over without ensuring the privacy of the attorney-client communications." And then he goes on.

Have I read that correctly?
A Yes.
Q Okay. So Mr. Lynn didn't say anything about the phone being thrown in the garbage, right?
A No.
Q He didn't say that it was disposed of, did he?
A No.
Q He didn't refer to any company practice or policy, right?
A No.
Q Mr. Lynn's not a liar, is he?
A No, he's not.
Q He's a decent and honest professional. Wouldn't you agree with that?
A Yes.
Q And is it fair to say that he conveyed only the information that he had at the time?
A I don't know.
Q Do you have any reason to believe that Mr. Lynn would withhold from the Debtor the information that the cell phone had been thrown in the garbage, consistent with company practice?
A No, I don't believe he would withhold whatever he knew.
Q All right. Let's talk about -- let's talk about other matters. You do know, sir, do you not, that the Debtor is subject to the Bankruptcy Court's jurisdiction?

A Yes.
Q Okay. And we just saw in the December 23rd letter that the Debtor demanded that you vacate their offices a week later, right?
A Yes.
Q And you knew that at or around the time the letter was sent on December 23rd, correct?
A I -- I don't remember when I knew.
Q Well, in fact, in fact, you or through counsel asked for an accommodation and asked for an extension of time to December 31st; isn't that right?
A I had to pack up 30 years of stuff in three days. I -- I know we asked for some forbearance. I don't think we got any. I don't remember the details. I don't understand why it's important.
Q Okay. It was actually -- withdrawn. The Debtor actually gave you seven days' notice, right? They sent the letter on December 23rd and asked you to vacate on December 30th, correct?
A I don't -- I don't remember. But, again, I think the initial response was it was inconsistent with shared services agreement. No Highland employees are coming into the office anyway. So kicking me out of my office was -- seemed vindictive and overreaching. And we tried to get some, you know, forbearance.

Q Okay.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Mr. Dondero, you were given seven days' notice before -- before you were going to be barred from the Debtor's office, correct?

A I don't know.

Q Okay.

MR. MORRIS: Can we go back to Exhibit K, please? Oh, actually, it's okay.

BY MR. MORRIS:

Q We just read, actually, the piece from the Debtor's letter of December 23rd barring you from the Debtor's office. Do you remember that? And we can go back and look at it if you want.

A Yes.

Q Was there anything ambiguous that you recall about the Debtor's demand that you not enter their offices after December 30th?

A Ambiguous? I can tell you what my understanding was or I can tell you what the letter says. What would you like to know?

Q I'd just like to know if, as you sit here right now, you believe there was anything ambiguous about the Debtor's demand that you vacate the offices as of December 30th?

A I mean, I did vacate the offices as of December 30th.
Q Correct. And you knew that -- and you were complying with the Debtor's demand you do that, right?
A Well, with the Court's demand, I guess.
Q Okay. And it's your understanding that you would not be permitted in the Debtor's offices after that time, correct?
A Um, (pause), uh, I don't know how to answer that question. I knew I wouldn't be residing in the offices anymore. But for legitimate business purposes, to visit the people at NexPoint who were in the office, since there are no Highland people in the office, or to handle a deposition, you know, there was nothing I thought inappropriate about that.
Q Did the Debtor tell you that they would allow you to enter the offices any time you just believed that it would be appropriate to do that?
A I used my business judgment.
MR. MORRIS: I move to strike.
BY MR. MORRIS:
Q I'm asking you a very --
THE COURT: Sustained.
BY MR. MORRIS:
Q -- specific question, sir. Did the Debtor ever tell you that they -- that you would be permitted to enter their offices after December 30th if you, in your own personal discretion, believed it to be appropriate?

A No.
Q Did the Debtor provide you any exception to their demand that you vacate the offices, without access, by and after December 30th?
A I always do what I think is appropriate and in the best interests. I don't know. I didn't know the specifics of the Debtor's -- okay, yeah, what the specifics of the Debtor was.
Q Despite the unambiguous nature of the Debtor's demands letter, on Tuesday you just walked right into the Debtor's office and sat for the deposition, correct?
A I believe that was reasonable, yes.
Q Okay. But you didn't -- you didn't have the Debtor's approval to do that, correct?
A We didn't have technology to do it anywhere else, so if the deposition was going to occur, it had to occur there.
Q Sir, --
MR. MORRIS: Move to strike.
THE COURT: Sustained.
BY MR. MORRIS:
Q And I ask you to just listen very carefully. And if it's not clear to you, please let me know. You did not have the Debtor's approval to enter their offices on Tuesday to give your deposition, correct?
A No.
Q And you did not even bother to ask the Debtor for

permission, correct?
A I'm prohibited from contacting them, so no, I did not.
Q Okay. Let's talk about other events that occurred after the entry of the TRO. We talked earlier about how you interfered with Mr. Seery's trading activities on behalf of the CLOs around Thanksgiving. Do you remember that?
A Yes.
Q But after the TRO was entered, the K&L Gates Clients also interfered with the Debtor's trading activities, correct?
A No.
MR. MORRIS: Can we go to Exhibit K, please? Can we start at the first page? And scroll down just a bit.
BY MR. MORRIS:
Q Do you see there's an explanation there about the Debtor's management of CLOs?
A Yes.
Q And there's a recitation of the history that we talked about earlier, where around Thanksgiving you intervened to block those trades?
A Yes.
Q And then the next paragraph refers to the prior motion that was brought by the CLO entities? I mean, the K&L Gates entities, right?
A Yes.
Q And you were aware of that motion at the time it was made,

right?
A Yes.
Q And you were supportive of the making of that motion, right?
A Supportive? Yes.
MR. MORRIS: And scroll down to the next paragraph, please.
BY MR. MORRIS:
Q Okay. So, my colleague wrote that, "On December 22nd, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLO sale of the AVAYA and SKY securities." Have I read that right?
A Yes.
Q And that took place six days after the motion that the Court characterized as frivolous was denied on December 16th?
A Yes. I wasn't aware of that, for what that's worth.
Q Okay. You personally instructed the employees -- withdrawn. NPA -- that refers to NexPoint, correct?
A Yes.
Q That's an entity you own and control, right?
A I -- largely.
Q And that's one of the Advisors we defined earlier, right?
A Yes.
Q And HCMFA, that's Fund Advisors, another advisory firm that you own and control, correct?

A Yes.
Q And you personally instructed, on or about December 22nd, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect SKY and AVAYA, right?
A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle trades that occurred. But that's a different ball of wax.
Q Okay. But you did instruct them not to execute trades that had not been made yet, right?
A Yeah. Trades that I thought were inappropriate, for no business purpose, I -- I told them not to execute.
Q Okay. You actually learned that Mr. Seery wanted to effectuate these trades the Friday before, right?
A I don't know, but what did I do? When did I know it? What did I do? When I knew things are inappropriate, I reacted immediately. I don't -- I don't -- whenever -- whenever I found out about inappropriate things, I reacted to the best of my ability.
Q Okay.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
Mr. Dondero, I'm going to -- I'm going to interject some instructions once again here. Remember we talked about early

on, and I know you've testified before, but I'll repeat it: You need to just give direct yes or no answers.

And let me just say that we see witnesses all the time do what you're doing here, and that is they feel they need to say more than yes or no. They feel the need to clarify or supplement the yes or no answer they give. And just to remind you how this works, your lawyer, Mr. Bonds, is going to be given the opportunity when Mr. Morris is through to ask you all the questions he wants, and that will be your chance to clarify yes and no answers to the extent he asks you to revisit certain of these questions and answers. Okay?

So I'm going to remind you once again: yes or no or direct -- you know, other appropriate direct answers. Mr. Bonds can let you clarify later. All right?

Mr. Morris, continue.

MR. MORRIS: Okay. Thank you, Your Honor.

Can we please put up on the screen Exhibit L? And at the, I guess, the bottom of Page 1.

BY MR. MORRIS:

Q This is an email string. And --

MR. MORRIS: Go to the email below that, please. Yeah. Okay. Right there.

BY MR. MORRIS:

Q This is an email from Mr. Seery dated December 18th at (garbled) :30 p.m. Do you see that?

A Yes.
Q And in the substantive portion of his email, continuing on to the next page, he's giving instructions to sell certain SKY and AVAYA securities that are held by CLOs, correct?
A Yes.
Q And Mr. Sowin forwarded this email to you, right?
A Yes.
MR. MORRIS: If we can scroll up.
BY MR. MORRIS:
Q And you forwarded it to Mr. Ellington, right? I'm sorry. Let's just give Ms. Canty a chance.
MR. MORRIS: Keep scrolling up.
BY MR. MORRIS:
Q So, Mr. Sowin forwarded it to you at 3:34 p.m. Do you see that?
A Yes.
Q And if we scroll up, you turn around and give it to Mr. Ellington a few minutes later, right?
A Yes.
Q So that you and Mr. Ellington and Mr. Sowin are all aware that Mr. Seery wants to sell AVAYA and SKY securities on behalf of the CLOs, right?
A Yes.
Q Why did you decide to forward this email to Mr. Ellington?
A Ellington's role has been of settlement counsel that

supposedly everybody is able to talk to to try and bridge some kind of settlement. Ellington, I thought, should be aware of things that would make settlement more difficult or create liabilities for the Debtor. And so I thought it was appropriate for him to know.

Q Okay. This is the email that caused you to put a stop to the trades that Mr. Seery wanted to effectuate, correct?

A This is the -- I'm sorry. Ask the question again. This is the email that what?

Q This is -- this is how you learned that Mr. Seery wanted to effectuate rates in AVAYA and SKY securities, right?

A I -- I learned about it pretty early on of him trading it. I don't know if it was this email or -- or one of the others. But yes, it was from -- it was from Joe Sowin.

Q And you would agree with me, would you not, that you personally instructed the employees of the Advisors not to execute the very trades that Mr. Seery identifies in this email, correct?

A Yes.

Q At no time after December 10th, when the TRO was entered into, did you instruct the employees of the Funds that you own and control not to interfere or impede the Debtor's management of the CLOs, correct?

MR. BONDS: Can you repeat the question? I'm sorry.

BY MR. MORRIS:

Q At no time after December 10th, when the TRO was entered, did Mr. Dondero instruct any employee of either of the Advisors that he owns and controls not to interfere or impede with the Debtor's business and management of the CLOs, correct?

A I did not.

Q Okay. Neither you nor anybody that you know of ever provided a copy of the TRO to the employees of the Advisors that you own and control, correct?

A I don't know.

Q Okay. After the TRO was entered, the K -- after the TRO was entered, and after the hearing on December 16th, the K&L Gates Clients sent three more letters to the Debtor, right?

A Yes.

Q Okay.

MR. MORRIS: Your Honor, those are Exhibits M as in Mary, N as in Nancy, and X as in x-ray.

THE COURT: Okay.

MR. MORRIS: Unless the witness thinks there is a need to look at them specifically -- oh, let me just ask a couple of questions.

BY MR. MORRIS:

Q Mr. Dondero, in those letters, it's your understanding that the K&L Gates Clients again requested that the Debtor not trade any securities on behalf of the CLOs, right?

A Yes.
Q And it's your understanding that in those letters the K&L Gates Clients suggested that they might seek to terminate the CLO management agreements to which the Debtor was a party, correct?
A I don't know specifically, but that wouldn't surprise me.
Q Okay.
A So, --
Q Is it your understanding that the K&L Gates Clients also sent the letter a Debtor -- the Debtor a letter in which they asserted that your eviction from the offices might cause them damages and harm?
A I know there was objections to me -- I assume so. I don't know specifically.
Q And you were aware of these letters at the time that they were being sent, right?
A I'm sorry, what?
Q You were aware of these letters at the time they were being sent by the K&L Gates Clients, right?
A Generally, yes.
Q And you were generally supportive of the sending of those letters, right?
A I'm always supportive of doing what we believe is the right thing, yes.
Q And in this case, you were supportive of the sending of

these three letters, correct?
A I -- yes.
Q In fact, you pushed and encouraged the chief compliance officer and the general counsel to send these letters, right?
A I push them to do the right thing. I didn't push them specifically.
Q Okay. At the time the letters were sent, you were aware that the K&L Gates Clients had filed that motion that was heard on the 16th of December, correct?
A Yes.
Q And you were aware that they advanced the very same -- withdrawn. You're aware that in the letters they advance some of the very same arguments that Judge Jernigan had dismissed as frivolous just six days earlier, right?
A I wasn't at the hearing. I don't know if it was the same arguments or similar arguments. I -- I can't -- I can't corroborate the similarity or contrast the differences between the two.
Q All right. So it's fair to say, then, that you were supportive of the sending of these letters, you were aware of the December 16 argument, but you didn't take the time to see whether or not any of the arguments being advanced in the letters were consistent or any different from the arguments that were made at the December 16th hearing, correct?
A Correct. I wasn't directly involved, but still believed

that fundamentally Seery's behavior was wrong.
Q You never instructed the K&L Gates Clients to withdraw the three letters that were sent after December 10th, correct?
A No.
Q And you're aware that the Debtor had demanded that those letters be withdrawn or it would seek a temporary restraining order against the K&L Gates Clients, correct?
A I'm not aware of the back and forth.
Q Okay. Let's talk about your communications with Mr. Ellington and Mr. Leventon. You communicated with them on numerous occasions after December 16th, correct?
A No.
Q No, you didn't communicate with them many times after December 10th?
A You're lumping in Ellington and Isaac, and numerous times is a bad clarifier, so the answer is no.
Q I appreciate that. You communicated many times with Mr. Ellington after December 10th, right?
A Not -- not outside shared services, pot plan, and him being the go-between between me and Seery. I would say virtually none.
Q Okay. On Saturday, December 12th, two days after the temporary restraining order was entered against you, Mr. Ellington was involved in discussions with your personal counsel about who would serve as a witness at the upcoming

December 16th hearing, correct?
A I don't -- I don't remember.
Q Let's see if we can refresh your recollection.
MR. MORRIS: Can we please put up Exhibit P? Can we scroll down? Okay.
BY MR. MORRIS:
Q Do you see where Mr. Lynn writes you an email on Saturday, December 12th, and he says, among other things, it looks like trial?
A Yes.
Q And then if we scroll up a little bit, he wrote further, "That said, we must have a witness now." Have I read that accurately?
A Yes.
Q Okay.
MR. MORRIS: Can we scroll back up?
BY MR. MORRIS:
Q And this is Mr. Ellington's response, right?
A Yes.
Q Can you read Mr. Ellington's response for Judge Jernigan?
A (reading) It will be J.P. Sevilla. I'll tell him that he needs to contact you first thing in the morning.
Q Is it your testimony that this email relates to -- withdrawn. Mr. Ellington is not your personal lawyer, right?
A No. Mr. Ellington has been functioning as settlement

counsel, trying to bridge settlement, --

Q Okay.

A -- which is what this email looks like to me.

Q Okay. I'll let -- I'll let the judge --

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q So, after the TRO was entered, you and Mr. Ellington not only communicated but Mr. Ellington was actively involved in identifying witnesses to testify on behalf of your interests at the December 16th hearing, correct?

A I -- I don't know what the witness was for, but I believe Ellington was doing his job as settlement counsel, trying to facilitate settlement. I don't -- I have no reason to think this was anything more nefarious.

Q Okay. You looked to Mr. Ellington for leadership in coordinating with all of the lawyers who were working for you and your personal interests, right?

A I'm not agreeing with that.

Q No? All right.

MR. MORRIS: Let's look at the next exhibit. I think it's Exhibit Q. And if we could stop right there.

BY MR. MORRIS:

Q There's an email from Douglas Draper, do you see that, on December 16th?

A Yes.
Q So this is after the TRO was entered into, right?
A I believe so.
Q And Mr. Draper represents Get Good and Dugaboy; is that right?
A I believe so.
Q And he was new to the case at that moment in time, right?
A On or about, I believe so.
Q And he was looking to -- he was looking for a joint meeting among all of the lawyers representing your personal interests, right?
A No. I think he was trying to coordinate -- coordinate or understand whatever. But not everybody -- he doesn't just talk to lawyers around my interests. I mean, and he hasn't sought agreements with just lawyers reflecting my interests.
Q You forwarded Mr. Draper's email to Mr. Ellington, right?
A Yes.
Q But you can't remember why you did that, right, or at least -- withdrawn. You couldn't remember as of Tuesday's deposition why you forwarded this email to Mr. Ellington, right?
A Not specifically. But, again, Ellington is settlement counsel.
MR. MORRIS: I move to strike, Your Honor, after the initial phrase "Not specifically."

THE COURT: Sustained.

MR. MORRIS: Can we scroll up a little bit, please?

BY MR. MORRIS:

Q Mr. Lynn responded initially with a reference to the assumption that a particular lawyer was with K&L Gates, right?

A Yes.

MR. MORRIS: And if we could scroll up a little bit.

BY MR. MORRIS:

Q That's where you forward this email to Mr. Ellington, right?

A Yes.

Q And can you read to Judge Jernigan what you wrote at 1:33 p.m.?

A (reading) I'm going to need you to provide leadership here.

Q But at least as of Tuesday's deposition, you couldn't remember why you needed Mr. Ellington to provide leadership, right?

A Correct. Nor if he did.

MR. MORRIS: I move to strike the latter portion of the answer, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q So you have no --

(Echoing.)

MR. MORRIS: We're getting --

THE WITNESS: Can I -- can I hold -- can I hold on for one second here? Can I just put you guys on mute, please?

MR. MORRIS: Sure.

(Pause.)

THE COURT: All right.

THE CLERK: John, there's some feedback again. I'm sorry.

MR. MORRIS: That's okay.

THE COURT: Mr. Bonds, --

MR. MORRIS: We lost Mr. --

THE COURT: Mr. Bonds, what's going on?

MR. MORRIS: We've lost -- the screen --

THE COURT: You know you can't counsel your client in the middle of court testimony. I thought maybe Mr. Dondero had some non-legal thing going on in the background. Mr. Bonds?

MR. BONDS: Your Honor, I -- I did not in any way counsel Mr. Dondero.

THE COURT: Okay. Well, I'll take your representation on that. Are we ready to go forward?

MR. MORRIS: I'll readily accept Mr. Bonds' representation as well, Your Honor.

THE COURT: Okay.

MR. MORRIS: But I'd ask that it not happen again.

THE COURT: Well, fair enough. I think Mr. Bonds understands.

BY MR. MORRIS:

Q Mr. Dondero, you have no recollection of why you forwarded this email to Mr. Ellington and why you told him you needed him to provide leadership, correct?

A Correct.

MR. MORRIS: And if we can scroll up, can we just see how Mr. Ellington responded?

BY MR. MORRIS:

Q All right. And can you just read for Judge Jernigan what Mr. Ellington said on December 16th in response to your statement that you're going to need him to provide leadership here?

A (reading) On it.

Q Thank you. In your deposition, you testified without qualification that Scott Ellington and Isaac Leventon did not participate in the drafting of a joint interest or mutual defense agreement. Do you recall that testimony?

A Yes, as far as I knew.

Q And you also testified that you never discussed with either of them the topic of a joint defense or mutual defense agreement; is that right?

A Correct. That was Draper.

Q Okay.

MR. MORRIS: Can we put up Exhibit 11, please? I apologize. It's Exhibit W. Okay. Can we stop right there?

BY MR. MORRIS:

Q This is an email between some of your counsel and Mr. Ellington. Do you see that?

A Yes.

Q And a common interest agreement is attached to the communication. Is that a fair reading of the portion of the exhibit that's on the screen?

A Yes.

MR. MORRIS: And can we scroll to the top of the exhibit, please?

BY MR. MORRIS:

Q And do you see that there is an email exchange between Mr. Ellington and Mr. Leventon concerning the common interest agreement?

A Yes.

Q Okay. So it's your testimony that this email may exist but you had no idea that Mr. Ellington and Mr. Leventon were working with your lawyers to draft a common interest agreement? Is that your testimony?

A I wasn't part of this. It looks to me like they were just included in a -- a final draft. And, again, Ellington is settlement counsel. I -- but I don't want to speculate why or what they were doing.

Q Do you remember that I asked you a few questions the other day about Multi-Strat financial statements and whether or not you'd ever given -- you'd ever received any of those documents from Mr. Ellington and Mr. Leventon?

A Yes.

Q Okay. And you testified under oath that you never got any financial information, including balance sheets, concerning Multi-Strat from either of those lawyers, correct?

A I -- hmm. I -- I don't remember. Yeah, I don't remember. I may have to clarify that, but I don't remember.

Q You testified under oath the other day that you wouldn't even think to ask them for financial information relating to Multi-Strat because it's not natural for them to have it, right?

A I -- I'm sorry.

THE WITNESS: Your Honor, do I just have to answer these questions yes or no, or is that the -- can I clarify at all, or can I --

THE COURT: Well, I mean, if the question simply directs a yes or no answer, that's correct, you just answer yes or no. And I think this one did.

Again, your lawyer is going to have the chance to do follow-up examination later.

BY MR. MORRIS:

Q So let me try again. During your deposition, you

testified under oath without qualification that you never got any financial information, including balance sheets, concerning Multi-Strat from Scott Ellington or Isaac Leventon, correct?

A I believe I might have misspoken there.

Q Okay. But that was your testimony the other day, right?

A Yes.

Q And today, you believe you might have gotten that information from them, right?

A Only because Ellington was supposed to be the go-between and I couldn't go directly to somebody. But he wouldn't normally have that information, which is what I was saying.

MR. MORRIS: Your Honor, I have an exhibit that's not on the Debtor's exhibit list, and I was going to use it for impeachment purposes to establish the fact that Mr. Ellington and Mr. Leventon in fact gave to Mr. Dondero, after December 10th, financial information concerning Multi-Strat, which Mr. Dondero had previously denied receiving. May I -- may I use that document to impeach Mr. Dondero?

THE COURT: You may.

MR. BONDS: Your Honor, I'm going to object. This is pretty clearly something that should have been disclosed and it wasn't.

THE COURT: Well, he says it's purely to impeach the testimony that Mr. Dondero just now gave. So we'll -- we'll

see the document and, you know, I'll either agree with that being impeachment or not. So, he may proceed.

MR. BONDS: Your Honor, I think that the testimony -- Your Honor, I'm sorry. I think that the testimony that was (inaudible) given was that he thought that he may have talked to Scott or Isaac, not that he did not.

MR. MORRIS: Your Honor, if I may, the testimony the other day was unequivocal and unambiguous that not only didn't he get this information from the two lawyers, but that he had no reason to believe he would ever get the information from those two lawyers.

I appreciate the fact that Mr. Dondero today is suggesting that he may have, but I -- I would still like to use this document to refresh his recollection and to impeach even the possibility that he's giving this qualified testimony that he may have.

THE COURT: All right.

MR. MORRIS: There's no doubt that he did.

THE COURT: I overrule the objection. You can go forward.

MR. MORRIS: Can we please put up on the screen -- I believe it's Debtor's Exhibit AA. And if we can scroll down, please. And just stop, yeah, towards the top. All right. Stop right there.

BY MR. MORRIS:

Q Do you see in the first email Mr. Klos -- he's an employee of the Debtor, right?
A Yes.
Q And he provides Multi-Strat balance sheet and financial information to Mr. Leventon, Mr. Ellington, and Mr. Waterhouse. Do you see that?
A Yes. He's the person I would normally go to.
Q Okay. And they're all Debtor employees, right?
A Yes.
Q Okay. And then Mr. Leventon sends it to you and Mr. Ellington on February 4th, 2020; is that correct?
A Yes.
Q And this is confidential information; is that fair?
A No.
Q Okay. Let's -- let's talk about the next --
A No, it's not -- wait, wait, hold on a second. Judge, I need to clarify this. I -- it's not confidential information. It's available to every investor, of which I was one of them. Okay? So, let's -- let's not mischaracterize this as some corporate secret.
Q Okay. You interfered with the Debtor's production of documents; isn't that right?
A No.
Q Several times in the last year, various entities have requested that Dugaboy produce its financial statements,

correct?
A Dugaboy is my personal trust. It's not an entity of the Debtor in any form or fashion.
Q Sir, you're aware that several times in the last year various entities requested that the Debtor produce Dugaboy financial information, correct?
A The Debtor is not in a position to do it. I -- I don't know if it's been several times or whatever, but it's not appropriate.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
BY MR. MORRIS:
Q I'll try one more time. If we need to go to the transcript, we can. It's a very simple question. You knew and you know that several times in the last year various entities have requested that the Debtor produce Dugaboy financial statements, correct?
A Yes.
Q Do you recall at the deposition the other day I asked you whether you had ever discussed with Mr. Ellington and Mr. Leventon whether or not the Dugaboy financial statements needed to be produced, and you were directed not to answer the question by counsel and you followed those directions?
A Yes.
Q But you communicated with at least one employee concerning

the production of the Dugaboy financial statements, correct?
A Yes.
Q And that's Melissa Schroth; is that right?
A Yes.
Q She's an executive accountant employed by the Debtor, right?
A Yes.
Q And on December 16th, after the TRO was entered into, you instructed Ms. Schroth not to produce the Dugaboy financials without a subpoena, correct?
A That was the advice I had gotten from counsel, yes.
Q Okay. The Dugaboy and Get Good financial statements are on the Debtor's platform, correct?
A I do not know.
Q There is no shared services agreement between Dugaboy or Get Good and the Debtor, correct?
A I don't know.
Q You're not aware of any; is that fair?
A Yes.
Q Okay.
MR. MORRIS: Can we put on the screen Exhibit R? And can you scroll down a bit?
BY MR. MORRIS:
Q Okay. That's Melissa Schroth at the top there; is that right?

A Yes.
Q And these are texts that you exchanged with her after the TRO was entered into, correct?
A Yes.
MR. MORRIS: Can we scroll down a little bit?
BY MR. MORRIS:
Q And do you see on December 16th you sent Ms. Schroth an email -- I apologize -- a text that says, "No Dugaboy details without subpoena"?
A Yeah.
Q But you can't remember why you sent this text, correct? At least you couldn't as of Tuesday?
A I believe it was on advice of counsel.
Q But that's not what you said on Tuesday, correct?
A I don't remember.
Q You sent this text even though you knew that various entities had requested the Dugaboy financials, but you have no recollection of ever talking to anyone at any time about the production of those documents, right?
A Can you repeat the question?
Q I'll move on. Let me just -- last topic, and then I'm going to respectfully request that we just take a short break. You're familiar with the law firm of Baker & McKenzie; is that right?
(Echoing.)

A I'm sorry. You broke up on us there.
Q No problem. You're familiar with the law firm Baker & McKenzie, correct?
A Yes.
Q That firm has never -- never represented you or any entity in which you have an ownership interest, correct?
A Correct.
Q But in December, the Employee Group, of which Mr. Leventon and Mr. Ellington was a part, was considering changing counsel from Winston & Strawn to Baker & McKenzie, right?
A I believe so.
Q And you asked -- and because of that, you specifically asked Mr. Leventon for the contact information for the lawyers at Baker & McKenzie, right?
A I believe so.
Q Okay.
MR. MORRIS: Can we put up Exhibit S, please?
BY MR. MORRIS:
Q And who is that email sent from? I apologize. Withdrawn. Who is that text message exchange with?
A Isaac Leventon.
Q Okay. And Mr. Leventon was an employee of the Debtor after December 10th, correct?
A Yes.
MR. MORRIS: Can we scroll down a little bit?

BY MR. MORRIS:

Q And on December 22nd, you asked Mr. Leventon for the contact information at Baker & McKenzie, correct?

A Yes.

Q And the reason you asked Mr. Leventon for the contact information, that was in connection with the shared defense or mutual defense agreement, right?

A I -- I don't remember why. It might have just been for my records. I don't know.

Q The only reason that you could think of for asking for this information was for the shared defense or mutual defense agreement, correct?

A I -- no, it -- I don't know and I don't want to speculate. I don't want to -- I don't want to speculate. I -- did -- I don't think I ever got -- I don't know what your point is.

MR. MORRIS: May we please go back to the transcript at Page 136? At the bottom, Line 23.

BY MR. MORRIS:

Q Were you asked this question and did you give this answer?

"Q Do you recall asking Isaac Leventon for the contact information for the -- for the lawyers at Bakers & McKenzie?

"A I -- I don't -- I don't -- it might have been for part of the shared defense, mutual defense whatever agreement, but that's -- that's the only reason I would

have asked for it."
Q Did you give that answer to my question?
A Yeah. I shouldn't have speculated.
Q Okay. But that's the answer you gave the other day; is that right?
A I shouldn't have speculated. That's my answer today.
Q And today -- withdrawn. In fact, you wanted the Baker contact information in order to help Mr. Draper coordinate the mutual defense agreement, correct?
A I don't want to speculate.
MR. MORRIS: Can we go to Page 139, please? Lines 2 to 5.
BY MR. MORRIS:
Q Did you -- did you hear this question and did you give this answer on Tuesday?
"Q Why did you want the Baker & McKenzie contact information?
"A I was trying to help Draper coordinate the mutual shared defense agreement, period."
Q Did you give that answer to my question on Tuesday?
A Yes.
MR. MORRIS: Your Honor, I'd respectfully request a short break to see if I've got anything more.
THE COURT: All right. Well, I was going to ask you how much more do you think you have. We've been going almost

two hours.

So we'll take a break. Let's make it a ten-minute break. And then, depending on how much more you have and how much Mr. Bonds is going to have, we'll figure out are we going to need a lunch break in just a bit.

All right. So it's 12:00 noon Central. We'll come back at 12:10. Ten minutes.

MR. MORRIS: Your Honor, may I have an instruction of the witness not to check his phone for any purposes, not to make -- not to communicate with anybody until -- until his testimony is completed?

THE COURT: All right. Any -- any --

MR. BONDS: Your Honor, he's going to speak with me.

THE COURT: Pardon?

MR. BONDS: I assumed he will speak to me about just general events. I mean, I don't want to be in breach of some order.

MR. MORRIS: Yeah. I would -- I would -- I would ask for -- you know, it's not -- he's on the stand. He's still on the stand.

THE COURT: Yeah. He --

MR. MORRIS: He shouldn't be conferring with counsel, either. No disrespect to Mr. Bonds at all.

THE COURT: Exactly. I mean, you all can talk about, you know, the national champion football game or whatever, but

it would be counseling your client in the middle of testimony if you -- if you talk about this case at the moment. So, you know, --

MR. BONDS: I understand, Your Honor.

THE COURT: All right.

MR. BONDS: I just didn't want to be --

THE COURT: All right. So now we'll come back at 12:11.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(A recess ensued from 12:01 p.m. until 12:12 p.m.

THE CLERK: All rise.

THE COURT: Please be seated. This is Judge Jernigan. We're going back on the record in Highland Capital versus Dondero. We have taken an 11-minute break. It looks like we have Mr. Dondero and counsel back. And Mr. Morris, are you out there, ready to proceed?

MR. MORRIS: I am, Your Honor. And I do have just a few more questions.

THE COURT: Okay. I'm sorry. Mr. Lynn, I see you're there in the room with Mr. Dondero. Now, did you want to --

MR. LYNN: Here's Mr. Bonds. I apologize. He was in the restroom.

THE COURT: Okay. All right. Everyone ready to proceed?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Can you hear me, Mr. Dondero?

A Yes.

Q Did you ever discuss the request of any party to produce the financial statements of Get Good and Dugaboy with Scott Ellington?

A Not that I recall.

Q Did you ever communicate with Mr. Leventon on the subject matter of whether or not the financial statements for Get Good and Dugaboy needed to be produced by the Debtor?

A No.

Q Those are the two questions that you were directed not to answer the other day, right?

A I don't remember.

Q Okay. You mentioned that Mr. Ellington serves in some capacity as settlement counsel. Do I have that right?

A Yes.

Q Do you know if there's any exception in the TRO that permits you to communicate directly with Mr. Ellington in his so-called capacity as settlement counsel?

A There was no change in his status in the TRO. It's -- and

I think he was still used by both the Debtor and by me in that function.

Q You said that -- you testified earlier that you understood that you were prohibited from speaking with the Debtor's employees, correct?

A Except for -- except for with regard to the pot plan, shared services, and Ellington as settlement counsel. But I continued to talk to employees about the pot plan as recently as the end of the year, and I continued to talk to employees about shared services based on the shared services proposal that was sent to Ellington and forwarded to me as recently as two days ago.

Q You never -- you never read the TRO, right?

A No.

MR. MORRIS: Can we have it put up on the screen? I don't know the exhibit number, Ms. Canty, but hopefully it's clear on the exhibit list.

MS. CANTY: I'm sorry, John. Can you repeat what you're looking for?

MR. MORRIS: The TRO. (Pause.) Can we scroll down to Paragraph 2, please? Okay.

BY MR. MORRIS:

Q I appreciate the fact that you've never seen this before, Mr. Dondero, but let me know if I'm reading Section 2(c) correctly. "James Dondero is temporarily enjoined and

refrained from" -- subparagraph (c) -- "communicating with any of the Debtor's employees, except for specifically -- except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero."

Have I read that correctly?

A Yes.

Q Does that provide for any exceptions concerning the pot plan?

A The Independent Board requested a meeting on the pot plan.

Q Okay. But does it -- I appreciate that, and we'll talk about that in a moment, but my question is very specifically looking at the order. And I, again, appreciate that you've never seen it before. But looking at the order now, is there any exception for you to communicate with the Debtor's employees concerning the pot plan?

A I would think the pot plan would fall under that, since some of the pot plan value is coming from affiliated entities that are subject to the shared services agreement. I would think that would be reasonable, again, plus the -- well, it was the subject of a meeting with the Independent Board at the end of the month.

Q Okay.

A I still think it's the best alternative for this estate.

Q Okay. Did you -- did you ever -- did you ever ask anybody, on your behalf, have asked the Debtors whether they

agreed with what you believed was a reasonable interpretation of the restraining order?

A I did not.

Q Okay. And let's just deal with the notion of settlement counsel. Do you see anywhere in this TRO -- and if you want to read anything more, please let me know -- do you see anything in this TRO that would permit you to speak with Mr. Ellington in his so-called role as settlement counsel?

A Well, I would say, more importantly, I don't see anything that takes away his role as settlement counsel, which was formally done six months ago.

Q Okay. I did read Section 2(c) correctly, right?

A Yes.

Q And the only exception that's in Judge Jernigan's restraining order that she entered against you relates to shared services. Have I read that correctly?

A Yes.

Q Okay. Let's talk about the pot plan for a moment. After the TRO was entered, you were interested in continuing to pursue the pot plan; is that right?

A I still believe it's the best possible result for this estate.

Q And you sought a forum with the Debtor's board, correct?

A Yes.

Q And you knew that you couldn't speak directly with any

member of the Debtor's board unless your counsel and the Debtor's counsel was -- was present at the same time. Correct?

A Yeah. As a matter of fact, I didn't go. I just had counsel go.

Q And the Debtor's board gave Mr. Lynn a forum for him to present your pot plan after the TRO was entered. Isn't that right?

A I believe so.

Q And are you aware that the Debtor's board spent more than an hour and a half with Mr. Lynn talking about your pot plan after the TRO was entered?

A Yes.

Q And is it fair to say that, notwithstanding Mr. Lynn's goodwill and Mr. Lynn's efforts to try to get to a successful resolution here, the terms on which the pot plan were offered were unacceptable to the Debtor?

A I wasn't there. I -- I don't know.

Q The Debtor never made a counteroffer, did it?

A Not that I heard.

Q You'll admit, will you not, that over the last year you or others acting on behalf -- on your behalf have made various pot plan proposals to the Official Committee of Unsecured Creditors?

A Quite generous pot plans that I think will exceed any

other recoveries.

Q Okay. So you're aware that your pot plan was delivered either by you or on your behalf to the U.C.C., correct?

A I -- some were. Some, I don't know.

Q Okay. Has the U.C.C. ever made a counterproposal to you?

A Nope.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Pass the witness.

Mr. Bonds, do you have any time estimate for me, guesstimate?

MR. BONDS: My guess is, Your Honor, it'll be about an hour. I would hope that we could take some type of a break, just because I'm a diabetic and need to have some --

THE COURT: All right. Well, --

MR. MORRIS: I have no objection, Your Honor. Whatever suits the Court. I'm willing to accommodate Mr. Bonds always.

THE COURT: Okay. Let's take a 45-minute break. Forty-five minutes. So, it's 12:22. We'll come back at seven minutes after 1:00 Central time.

All right. We're in recess.

THE CLERK: All rise.

(A luncheon recess ensued from 12:23 p.m. to 1:15 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. This is Judge

Jernigan. We are going back on the record in Highland Capital Management versus Dondero. We took a lunch break. And when we broke, Mr. Bonds was going to have the chance to examine Mr. Dondero.

Let me just make sure we have, first, Mr. Dondero and Mr. Bonds. Are you there?

MR. BONDS: Yes, we are.

THE COURT: All right. Very good. I don't see your video yet, but -- there you are. All right. Mr. Morris, are you there?

MR. MORRIS: I am here. Can you hear me, Your Honor?

THE COURT: I can. All right.

MR. MORRIS: Thank you.

THE COURT: Well, we've got lots of other people, but that's all I'll make sure we have at this moment. All right. Mr. Bonds, you may proceed.

And, Mr. Dondero, I know you know this, but I'm required to remind you you're still under oath.

Okay, go ahead.

CROSS-EXAMINATION

BY MR. BONDS:

Q Before you resigned as portfolio manager, how long had you had with Highland Capital Management?

A Since inception in 1994.

Q Okay. And how long have your offices been at the

Crescent?

A Eight years.

Q Okay. Before you resigned as portfolio manager, did you spend a lot of time in the office?

A Yes. I spent every business day this -- or 2020, including COVID, in the office.

Q Okay. And this is the first time that you are not in the office, is that right, in decades?

A Yes.

Q Can you tell us about the shared services agreement that exists between the Debtor and the other entities in which you have an interest?

A NexPoint, NexBank, the DAF, HFAM, primarily. I don't know what other entities paid. Shared services, which is typical in finance, for centralized tax, accounting, RICO function, so that we don't have to have redundant, multiple high-paid people in different entities. We'd have them centralized and with collective experience and collective functionality. And so, historically and recently, they pay Highland for those -- fees for those services. And I, as a non-paid employee, or a non-employee of Highland but a paid employee of NexBank -- of NexPoint, was -- and my occupancy and support were part of those shared services agreement.

Q What do those agreements allow those entities to do?

A Would it allow those entities to do? Well, to access the

Highland functionality as appropriate, because most of those entities, as is typical in finance, did not have their own functionality, legal, tax, and -- legal, tax, and accounting, but although they've been -- they've been building it lately in anticipation of the pot plan not going through at Highland.

Q Okay. Do those agreements allow you to share office space with --

MR. MORRIS: Objection --

THE WITNESS: Yes.

MR. MORRIS: -- to the form of the question, Your Honor. I think the exhibits and the agreements themselves would be the best evidence. They're not in evidence. They haven't been offered in evidence. I have no way to challenge the witness on anything he's saying. And on that basis, I'd -- it's not fair to the Plaintiff.

THE COURT: All right. Mr. Bonds, can I ask you to repeat your question? It was muffled and I was about to ask you to repeat it before I got the objection. So, repeat the question so I can --

MR. BONDS: Okay. I'm going to repeat it and amend it.

THE COURT: Okay.

BY MR. BONDS:

Q Is it your understanding that those agreements allow you to share office space with the Debtor?

A Yes. Virtually all of NexPoint's employees share the Highland office space as part of a shared services agreement.
Q Do those agreements allow you to share -- I'm sorry, excuse me. Strike that. What else do they allow?
A Typically is used in coordination of systems, servers, software, cloud software, Internet software, office software, tax, accounting, and legal functionality are all part of the shared services agreement, although, you know, much of -- much of that was stripped, you know, four or five months ago, especially legal functionality and the accounting functionality, without the concurrent adjustment in the building.
Q Okay. And you previously testified that you generally control NexPoint; is that correct?
A Generally. And the distinction I was trying to make is, you know, following the financial crisis in '08, compliance and the chief compliance officer has personal liability. along with the rest of the C Suite, and operates independently, with primary loyalty to the regulatory bodies. And they're -- they're not controlled, bamboozled, or segued away from their responsibility. And at all times, they're supposed to be doing what they believe is right, regulatorily-compliant, and in the best interest of investors.

So that was the distinction I was drawing between, A, what I was trying to remind Thomas of, that he should be

independent of Seery, in terms of following what he believes is correct and regulatory-compliant. And I don't have to push the NexPoint compliance people and general counsel to do anything specific, nor could I. They are supposed to do what is right from a regulatory investor standpoint, and I believe that's what they've done.

Q All right. And what do you mean by the term or the usage of the word "generally"?

A Well, that's the distinction I was just drawing. I mean, generally, on regular business strategy, you know, major investments, you know, other business items, I'm in control of those entities. But in terms of the content and allegations, regulatory opinions that come from compliance and the general counsel, that is their best views on their own, knowing they have compliance obligations and personal liability.

Q Do you believe that NexPoint and its other owners and interest holders have rights independent from your own in this case?

A Right, yes, and obligations, and responsibilities to investors. I believe the attempt by the Debtor or Seery to hide behind contracts that the Debtor has with the CLOs are -- are a spurious, incomplete argument. You know, they're not in compliance with those contracts. Bankruptcy alone is an event of default. Not having the key man -- the key men, the required requisite professionals that they're obligated to

contractually have working at the Debtor is a clear breach, in violation of those CLO contracts. Not having adequate staff or investment professionals to analyze, evaluate, or follow the investments in the portfolio is a clear violation. And specifically telling investors in the marketplace that you plan to terminate all employees, a date certain January 24th, is a proclamation that you're not going to be in any form able to be a qualified registered investment advisor or qualified in any which way to manage the portfolio or be in compliance with the CLO contracts.

I would -- I would further add that the selling of the securities, and the SKY securities, represent incomplete intentional incurring of loss against the investors. You have securities that are less liquid with, you know, restructured securities that have been owned for ten years, and they were sold during the most illiquid weeks of the year, the couple days before and after Thanksgiving, couple days before and after Christmas, where the investors could have gotten 10 or 15 percent more on their monies if they were just sold in a normal week. It's -- it's preposterous to me. It's consistent with Seery not being an investment (garbled).

But it's preposterous to me that -- that this treatment of investors is allowed or being camouflaged as some kind of contractual obligation, when the investors have said these funds are clearly in transition and the manager clearly is

incapable of managing them. You know, please don't transact until the transition is complete. But Jim Seery has traded every day, including -- I don't know about today, but every day this week, selling securities for no investment rationale and no business purpose.

Q Are you also portfolio manager for NexPoint?

A Yeah, I'm a portfolio manager for the closed-end retail funds, which do have a higher fiduciary obligation than anything on the institutional side. I'm a portfolio manager for those '40 Act funds that are the primary owners of the CLOs that Seery is selling securities in for some unknown reason.

Q And what shared service agreements exist between NexPoint and the Debtor?

A Those are the shared service agreements I spoke of. I don't want to repeat myself.

Q And I'm going to call Highland Capital Management Fund Advisors, LP just Fund Advisors. Is that okay with you?

A Yes.

Q Okay. And you testified generally -- that you generally control Fund Advisors; is that correct?

A Yes.

Q Do you believe that Fund Advisors and its owners and interest holders have rights independent from your own in this case?

A Yes.
Q Are you the portfolio manager for Fund Advisors?
A Yes.
Q What shared services agreements exist between Fund Advisors and the Debtor?
MR. MORRIS: Objection, Your Honor. The agreements themselves are the best evidence of the existence in terms of any agreement between the Debtor and these entities.
MR. BONDS: Your Honor, I can fix that.
THE COURT: Okay.
BY MR. BONDS:
Q I'm just asking: What is your understanding, Mr. Dondero, of the shared service agreements between the Debtor and Fund Advisors?
A It's similar to the agreement I mentioned earlier. It covers a broad range of centralized services historically provided by Highland, but now those, while still paying smaller than historic fees, those entities now have been required to incur the expenses of duplicating those functions.
Q Okay. Do you recall the email string dated November 24th regarding SKY equity that the Debtor talked about?
A Yes.
Q What did you mean when you sent that email about the trade? What did you mean, I'm sorry?
A I was trying to inform the traders, and once they knew --

they weren't willing to do the trades anymore once they knew that the underlying investors had requested that their accounts not being traded until the transition be -- until the transition of the CLOs was effectuated.

It's -- it's standard by, you know, statute or understanding, in the money and management business, when you're moving accounts from one asset manager to another, and someone requests that you don't do anything to their account, you don't trade it whimsically. And so I was -- I was making sure the traders knew that the underlying investors had requested that no trades occur in their accounts.

And then I believed it was a clear violation of the Registered Investment Adviser's Act. I believe that people involved at a senior level or at a compliance level could have material liability, and could create material liability for the Debtor. And I think if, as I said before, I think if anybody on this call were to call the SEC, they would start on audit on this.

MR. MORRIS: Your Honor, I move to strike the first portion of the answer prior to when he started to describe what he believes and what he thinks. The first portion of the answer was devoted to testifying about what is in the knowledge of the people who he was communicating with. There's no evidence. Mr. Dondero, of course, was free to call any witness he wanted. He could have called the chief

compliance officer. He could have called the general counsel. He could have called all the people he's now testifying on behalf of, and he did not.

So I move to strike anything in the record that purports to reflect or suggest the knowledge on behalf of any party other than Mr. Dondero.

THE COURT: Okay. I'm --

MR. BONDS: Let me rephrase -- Your Honor, I'm going to rephrase the question.

THE COURT: Okay. Very well.

MR. BONDS: I'm sorry.

THE COURT: So the motion to strike is granted. If you're going to rephrase, go ahead.

MR. BONDS: Okay.

BY MR. BONDS:

Q Mr. Dondero, what did you mean when you said -- that the emails about the trade?

A Okay. I'll give my intention by sending emails to stop the trade and my basis for those emails. My intentions were to inform the traders and to inform the compliance people that I believe there was a trade that wasn't in the best interest of the employees that had no business purpose for its occurring. And the people involved weren't aware that the investors had sent over requests not to trade their accounts while they were in transition.

So I made the traders aware of that. I made compliance aware of that also. And it's my belief, based on 30 years' experience in the industry, that it is entirely inappropriate to trade the accounts of investors that are in transition, and especially when you're not -- you're not contractually -- you are contractually in default with that client, to trade their account whimsically, for no business purpose. And I thought it was a clear breach of both regulatory, ethical, and fairness with regard to the investors.

So I -- what did you know, when did you know it, what did you do? I did what I felt was the right thing, which I try and do every day, and made all the relevant parties aware of what was going on.

Q Mr. Dondero, do you recall the text message you sent to Mr. Seery in which you said, "Be careful what you do"?

A Yes.

Q What did you mean by that message?

A It's -- I even said, Last warning. I mean, I -- he's doing things against the interests of investors. He's purposely incurring losses by trading in days and weeks and time of the year, the day before and after Thanksgiving, where any novice knows the markets are illiquid and anybody who can read a computer screen can see you get ten percent less -- five or ten percent less than you would the week before or the week after. And with as much professional umbrage as

possible, I was recommending that he stop.
Q Did you intend to personally threaten Mr. Seery in any way?
A No. It was bad -- bad intentional professional acts against the interests of investors that flow through to '40 Act retail mom-and-pop investors. I was trying to prevent those losses and those bad acts from occurring. And I believe everybody who's -- everybody around that issue should be ashamed of themselves, in my opinion.
Q Do you now regret sending the text?
A No. No, I mean, I could have worded it differently. I was angry on behalf of the investors.
Q And Mr. Dondero, you have management ownership interest in that entity; is that right?
A Yes.
Q Do you believe the interests or other entities in which you are involved are independent from your personal rights in this case?
A Yes.
Q And do you believe you caused anyone to violate the TRO?
A No. I've been -- I've been very conscious to just try and champion the thing that -- things that I think are important and the things that I've been tasked to do, like an attractive pot plan to help resolve this case. I spend time on that. But every once in a while, do I have to access, let's say,

David Klos, who is the person who put the model together, who has been working on it for six or nine months, and no one else S has a copy of? Yes. Yeah, I have to -- I have to access him. I don't believe that's the -- inappropriate or in any way violating the spirit of the TRO.

I believe settlement in this case is only going to happen with somebody fostering communication. And Ellington's role, which I thought was a good one and I thought he was performing well as settlement counsel, was an important role. And I used him for things like -- and Seery also used him for things. As recently as two days before Ellington was fired, Seery gave him a shared services proposal to negotiate with me. Ellington has always been the go-between from a settlement and a legal standpoint. I think his role there was -- it was valued. To try to honor the TRO was things like Multi-Strat, that I didn't remember correctly. Ninety percent of the time or for the last 20 years I would have gone directly to Accounting and Dave Klos for it, but I purposely went to settlement counsel in terms of Ellington in order to get the Multi-Strat information which we needed in order to put the pot plan together that we went to the Independent Board with at the end of December.

Q (faintly) And do you recall the questions that Debtor's counsel had regarding the letters sent by K&L Gates to clients of the Debtor?

MR. MORRIS: I'm sorry, Your Honor. I had trouble hearing that question.

THE COURT: Please repeat.

MR. BONDS: Sure.

BY MR. BONDS:

Q Do you recall the questions Debtor's counsel had regarding the letters sent by K&L Gates to the clients of the Debtor -- to the Debtor?

A Yes.

Q You testified on direct that the letters were sent to do the right thing; is that correct?

A Yes.

Q What did you mean by that?

A I don't want to repeat too much of what I just said, but the Debtor has a contract to manage the CLOs, which in no way is it not in default of. It doesn't have the staff. It doesn't have the expertise. Seery has no historic knowledge on the investments. The investment staff of Highland has been gutted, with me being gone, with Mark Okada being gone, with Trey Parker being gone, with John Poglitsch being gone.

And there's -- there's a couple analysts that are a year or two out of school. The overall portfolio is in no way being understood, managed, or monitored. And for it to be amateur hour, incurring losses for no business purpose, when the investors have requested numerous times for their account

not to be traded, is crazy to me. Where the investors say, We just want our account left alone. We just want to keep the exposure. And Jim Seery decides no, there's -- I'm going to turn it into cash for no reason. I'm just going to sell your assets and turn them to cash and incur losses by doing it the week of Thanksgiving and the week of Christmas. I think it's -- it's shameful. I'm glad the compliance people and the general counsel at HFAM and NexPoint saw it the same way. I didn't edit their letters, proof their letters, tell them how to craft their letters. They did that themselves, with regulatory counsel and personal liability. They put forward those letters.

MR. MORRIS: Your Honor (garbled) the testimony that Mr. Dondero just gave about these people saw it. They're not here to testify how they saw it. We know that Mr. Dondero personally saw and approved the letters before they went out. He can testify what he thinks, what he believes. I have no problem with that. But there should be no evidence in the record of what the compliance people thought, believed, understood, anything like that. It's not right.

THE COURT: All right. That's essentially a --

MR. BONDS: Your Honor?

THE COURT: -- a hearsay objection, I would say, or lack of personal knowledge, perhaps. Mr. Bonds, what is your response?

MR. BONDS: Your Honor, my response would be that there are several exhibits the Debtor introduced today that stand for the proposition that the compliance officers were concerned. So I think there is ample evidence of that in the record.

THE COURT: I didn't --

MR. MORRIS: Your Honor, the letter --

THE COURT: I did not understand what you said is in the record. Say again.

MR. BONDS: Your Honor, I'm sorry. The -- there are -- there are references that are replete in the record that have to do with the compliance officers' understanding of the transactions.

THE COURT: I don't know what you're referring to.

THE WITNESS: Your Honor?

THE COURT: I've got a lot of exhibits. You're going to have to point out what you think --

THE WITNESS: Can I -- can I -- can I -- can I answer for -- that for a second? The letters that were signed by the compliance people or by the businesspeople at NexPoint and HFAM objecting to the transactions, those letters were their beliefs, their researched beliefs. They weren't --

THE COURT: Okay.

THE WITNESS: -- micromanaged by me. You know, they weren't -- I agree with them, but those weren't my beliefs

that they've stated. Those were their own beliefs and their own research, --

THE COURT: All right.

THE WITNESS: -- and the record should reflect --

THE COURT: This is clearly hearsay. I mean, it's one thing to have a letter, but to go behind the letter and say, you know, what the beliefs inherent in the words were is inadmissible. All right? So I strike that.

THE WITNESS: Maybe ask your question again.

BY MR. BONDS:

Q Yeah. What is your understanding of the rights that these parties had and what do you believe that was intended to be conveyed by the compliance officers?

MR. MORRIS: Objection. Calls -- calls for Mr. Dondero to divine the intent of third parties. Hearsay.

THE COURT: I sustain.

MR. BONDS: Your Honor, --

MR. MORRIS: No foundation.

MR. BONDS: -- I don't agree. I think that this is asking Mr. Dondero what he thinks.

MR. MORRIS: The letters speak for themselves, Your Honor.

THE COURT: Okay. I sustain --

MR. MORRIS: And Mr. --

THE COURT: I sustain the objection.

MR. MORRIS: All right. Thank you.

THE WITNESS: Ask me what I know. Or ask me what my concerns --

BY MR. BONDS:

Q Let me ask you this. What were your concerns relating to the compliance officers' exhibit?

A My concerns regarding the transaction, the transactions, which may repeat what I've said before, but I do want to make sure it gets in the record. So if we have to make a -- these were my concerns, whether or not they were the compliance people's concerns. I believe they were, and I believe they were similar, but I'm just going to say these are -- these were my concerns.

The Debtor, with its contractual -- with its contract with the CLOs, were in no way -- was in no way compliant with that contract or not in default of that contract. Bankruptcy is a reason for default. Not having the key men specified in the contract currently employed by the Advisor is a violation. Not having adequate investment staff to manage the portfolio is a violation of that contract. Announcing that you're laying off everybody and will no longer be a registered investment advisor is proclaiming that you, if you even have any -- any -- pretend that you're qualified or in compliance with the contract now, you're broadcasting that you won't be in three weeks, are -- are all mean that you're not in good

standing. Okay? Number one.

Number two, when the investors know that it's in transition, you're not in compliance as a manager, you're not going to be an RIA in three weeks, the accounts are going to have to transition to somebody else in three weeks, and the investors ask you, Please don't trade my accounts between now and then, that is -- that is a -- if it's not a *per se*, it's an ethical and a spirit violation of any relationship between an investor and an asset manager.

To then sell assets -- not replace assets, just sell assets for cash -- and purposely do it on the least liquid days of the year -- the day before Thanksgiving, the day after Thanksgiving, the week of Christmas, this past week, whatever -- to purposely incur losses so that the investors suffer ten or fifteen percent losses that other -- on each of those sales that they wouldn't otherwise have to incur, and for no stated business purpose, for no investment rationale, with no staff to even say whether the investment is potentially going up or down, is -- is -- is -- I've never seen anything else like it.

And I will stand up and say it every day: I'm glad the letters went out from HFAM and from NexPoint. I would never recommend they get retracted. And I believe everybody who signed those letters meant everything in those letters. And I believe the letters are correct. And I believe the whole selling of CLO assets is a travesty.

My personal opinion, we need an examiner or somebody here to look at this junk and look at some of the junk that occurred earlier this year. This -- this stuff is unbelievable to me.

Q Generally, who holds interests in the CLOs?

A A vast majority of the CLOs that we're speaking of that Seery has been selling the assets of are owned by the two mutual funds, the two '40 Act -- the two '40 Act mutual funds and the DAF. Between them, I think out of -- eleven out of the sixteen CLOs, they own a vast majority, and then I think, whatever, two or three they own a hundred percent, and I think two or three they own a significant minority.

And just because they don't own a hundred percent doesn't somehow allow a registered investment advisor to take advantage of an investor. And I -- I've never understood that defense. I wouldn't be able -- in my role of 30 years, I wouldn't be able to tell that to an investor, that, hey, you had a contract with us, we did something that wasn't in your best interest, but we got away with it because you didn't own a hundred percent, you only owned eighty percent.

MR. MORRIS: Your Honor, I move to strike. There's no contract between the Debtor and Mr. Dondero's -- and the entities that he owns and controls for purposes of the CLO. The only contract is between the Debtor and the CLOs themselves.

THE COURT: All right. Well, I overrule whatever objection that is. Again, if you want to bring something out on cross-examination or through Mr. Seery, you know, you're entitled to do that.

All right. Please continue.

BY MR. BONDS:

Q Do you believe these letters were sent by the Funds to the Advisors because they are trying to protect the independent entities?

A They're trying to protect their investors. They were trying to protect their regulatory liability for activities they see that are not in the best interests of investors.

MR. MORRIS: Objection, Your Honor. I move to strike. He's again testifying as to the intent of the people who sent the letters who are not here to testify today.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, what is your belief as to the letters that were sent by the Funds and Advisor? Is -- are they trying to protect their independent interests?

MR. MORRIS: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

THE WITNESS: Ask me --

BY MR. BONDS:

Q What is your understanding of why the letters were sent?

MR. MORRIS: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, would you have sent the letters?

A I would have sent the letters exactly or very similar or probably even more strongly than the letters were stated, for the purposes of protecting investors, to protecting mom-and-pop mutual fund investors from incurring unnecessary losses by an entity that was no longer in compliance with their -- with their asset management contract and because the investors had requested that their account just be frozen until it was transitioned.

That's why I would have sent the letter. That's why I believe the letter should be sent. That's why I'm happy they were sent. That's why we've never retracted.

Q Mr. Dondero, who is Jason Rothstein?

THE COURT: I did not hear the question.

THE WITNESS: Jason -- Jason --

MR. BONDS: Who --

THE COURT: Please repeat.

MR. BONDS: Yes. I asked Mr. Dondero who Jason Rothstein was.

THE WITNESS: Jason Rothstein heads up our systems

department at Highland Capital.

BY MR. BONDS:

Q Can you explain what your text message to Mr. Rothstein was about?

A Which text message? The one where it was in the drawer?

Q Yeah.

A Uh, --

Q And that was actually from him, not you.

A Yeah. That was from him. I think he transferred icons or set up personal stuff to the new phone, and he was just saying that the old phone was in Tara's drawer.

Q And you don't know whether -- what's happened to the phones, do you?

A No. Like I said, I believe they've been destroyed, but I -- I can find out. I mean, I can query and find out who destroyed it, if that's important.

Q And you understood that you were not supposed to talk to the Debtor's employees; is that correct?

A Like I said, except for my roles regarding shared services, the pot plan, and trying to reach some type of settlement, I've had painfully few conversations with the Debtor's employees.

Q When you talked to certain employees, did you think it was an -- under an exception to the TRO, like shared services, related to the pot plan, or settlement communications?

A Yes.

MR. MORRIS: Your Honor, I move to strike. Mr. Dondero never read the TRO. He's got no basis to say what the TRO required and didn't require.

MR. BONDS: That wasn't the -- that wasn't the question.

THE COURT: Okay.

MR. BONDS: I'm sorry.

THE COURT: Okay. Rephrase the question, please.

MR. BONDS: Okay. I'm sorry.

BY MR. BONDS:

Q When you talked to these -- to certain employees, did you think it was under an exception to the TRO, like shared services, relating to the pot plan, or settlement communications?

A Yes. Absolutely.

MR. MORRIS: I object. No foundation.

THE COURT: Sustained.

BY MR. BONDS:

Q Mr. Dondero, do you understand -- did your lawyers explain to you the TRO?

A Yes.

Q And who was the lawyer that explained the TRO to you?

MR. MORRIS: Your Honor, I don't know if we're getting into a waiver of privilege, but I just want to tell

you that my antenna are up very high.

THE COURT: Okay. Mine are as well, Mr. Bonds. Are you about to waive the privilege?

MR. BONDS: No, Your Honor, I am not.

THE COURT: Okay. Well, it sounded like perhaps we were about to have the witness testify about conversations he had with lawyers.

MR. BONDS: I'm sorry, Your Honor. That was not my intention. Again, I'm asking Mr. Dondero to explain for us his contact with -- or, his impression of the TRO.

BY MR. BONDS:

Q What did the TRO mean to you?

A The TRO meant to me that I was precluded from talking to Highland employees -- which, again, very few, if any, were coming into the office. I was not talking to Highland employees with any regularity anyway. But there was an exception with regard to Scott Ellington regard -- Scott Ellington in terms of him functioning as settlement attorney to try and bridge the U.C.C., the Independent Board, Jim Seery, other people, and things that impacted me or other entities.

I also viewed that there was an exception for the pot plan, which had been presented and gone over as recently as December 18th and 20th. And -- or December 18th, I think, was the date.

And you know what, I want to clarify a characterization of the pot plan. I still believe it's the best and most likely alternative for this estate in the long run. I think what we've proposed numerous times is more generous than what anyone will receive in a liquidation and in a more timely fashion.

And the last time we presented it to the Independent Board, the Independent Board thought it was attractive and thought we should go forward with it to the U.C.C. and other parties.

MR. MORRIS: Your Honor, I move to strike the last portion of the answer that purports to describe what the Independent Board thought.

THE COURT: Well, --

MR. MORRIS: No foundation. Hearsay.

THE COURT: What is your response to the hearsay objection, Mr. Bonds?

MR. BONDS: Your Honor, I don't have one.

THE COURT: Okay. I sustain.

BY MR. BONDS:

Q What exceptions did you believe there were for communications with employees?

A Okay. Thank you. Yeah. Like I said, I covered Scott Ellington and settlement counsel. I covered the pot plan.

Q Okay.

A My -- my view of the pot plan as -- my view of the pot plan was that it was very attractive, and I had received encouragement to go forward with it as something that should be workable. That's my testimony on that.

And then -- and we talk about negotiating shared services. So, there's shared services in terms of overlap in functionality, but there's also, in terms of negotiating the shared services agreement, which, as I said, was something that Ellington was put in charge of three or four days ago by Jim Seery to negotiate with us. And he reached out to me to negotiate it. And I think the Pachulski deadline on it was three days later. That whole process was something that I viewed as separate from the TRO, especially since it was initiated by Jim Seery, DSI, et cetera, and consistent with what Scott Ellington's role had been for the last six, nine months.

Q As to the Debtor's request that you vacate the office space, did you comply with this request?

A Yes.

Q What did you think that vacating meant?

A I moved out all my -- my personal items to a new office at NexBank.

Q (faintly) And, in fact, did you work on the last day over to 3:00 a.m.?

A Yes. 4:00.

THE COURT: Mr. Bonds, I didn't hear your question. I didn't hear your question.

MR. BONDS: Okay. I'm sorry.

BY MR. BONDS:

Q Did -- isn't it true that you worked through the night, to 3:00 or 4:00 a.m., to vacate the premises?

A Yes. Until 4:00 a.m. on the last day, to organize and pack up all my stuff, yes.

Q Did you think your presence in the office, with no other employees there, violated the spirit of the TRO?

A No. I thought it was over the top and meant to tweak me, but, yeah, there's no -- there's not Debtor employees coming in since COVID.

Q (faintly) Okay. And you thought you could talk to Mr. Ellington and -- as settlement counsel; is that correct?

MR. MORRIS: I'm having trouble hearing it, Your Honor.

THE WITNESS: Yes.

THE COURT: Yeah. We're -- Mr. Bonds, please make sure you speak into the device.

MR. BONDS: I'm sorry. I'll try to get closer. Okay. I asked the Debtor -- or I, excuse me, I asked Mr. Dondero if he thought he could talk to Ellington as a go-between or settlement counsel. And I asked him if that was correct.

THE WITNESS: Yes. For settlement, shared services, the pot plan. Nothing that interrupts or affects the Debtor, but for those purposes, as has consistently occurred for the last six months.

BY MR. BONDS:

Q Okay. And you saw the texts and emails presented by the Debtor between you and Mr. Leventon; is that correct?

A The one regarding Multi-Strat?

Q Yes.

A Yes.

Q In your understanding, did you believe those communications were allowed under the TRO?

A Well, yes. And, again, to clarify my -- my contrasting testimony, I would never typically have gone to them for that kind of information, but to be compliant with the TRO, for Multi-Strat information, which I needed in order to put together the pot plan that the Independent Board audienced on December 18, I needed the information on Multi-Strat, and I requested it as appropriate through settlement counsel Ellington. And I think Ellington requested it from Isaac, who requested it from David Klos.

The whole purpose, I believe -- my belief is the whole purpose of this TRO is to make it impossible for us to get information to come up with alternatives other than a -- the plan proposed by Jim Seery. It's our -- if -- if -- without

Ellington in the go-between, which he's now no longer an employee, I assume the only way we get any information, balance sheet or anything from Highland Capital, is with a subpoena.

And as much as I've tried to engage or make an attractive pot plan for everybody, each one of them has been a complete shot in the dark, without even knowing the assets and liabilities of Highland, but just estimating where they were or were likely to be.

Q Do you believe your text message with Leventon caused any harm to the Debtor's business?

A No. It potentially fostered a pot plan, because, you have to know, the pot plan needed -- one of the aspects of the pot plan was the --

Q Do you still want to advocate for your pot plan?

A I think that's eventually where we ultimately end up. Or -- or should end up. Otherwise, I fear it's going to be an extended, drawn-out process.

Q And how much did you initially propose to pay creditors in this case?

A The most recent -- the most recent pot plan?

Q No. The -- initially.

A The initial pot plan, I believe, was $160 million.

Q And what about the notes?

A There was $90 [million] of cash and I believe $70

[million] of notes.

Q And what is Multi-Strat?

A Multi-Strat is a fund that's managed by Highland. They used to have $40 or $50 million in value. It used to contain a lot of life settlement policies. And I believe now has $5 or $6 million of value, after assets have been sold.

Q Do you recall the email Debtor's counsel presented regarding the balance sheet today?

A The balance sheet of Multi-Strat?

Q Correct.

A Yes.

Q Do you believe you were entitled to see that document?

A Yes. It's just -- again, for the pot plan, I needed it. But also I'm an investor in that fund and I'm entitled to it. It's -- there was nothing in there that was improper or untoward or in any way damaged the Debtor.

Q And you recall the request for documents sent by the Debtor; is that correct?

A On my -- my personal estate plan?

Q No, on Multi-Strat.

A The Debtor's request on -- I'm sorry. What was that?

Q The Debtor sent you a request for Multi-Strat. For Duga -- I'm sorry.

A For Dugaboy? Okay.

Q Dugaboy.

A Yeah. There's -- there's personal estate planning trusts. Some are active. Some are inactive. Some have been around for 15 years. But they're -- they're not assets or anything that's related to the estate. And that was -- that was my text to Melissa that said, you know, Not without a subpoena.

Q Mr. Dondero, if you remember back on Exhibit K, there was some request that you terminate your offices at the Crescent, and I think you were given seven days' notice to do that. Do you know if Christmas occurred during that time?

A I believe it did.

Q So, if Christmas and Christmas Eve are both holidays, how many days, business days, did they give you to terminate or to get out of the space?

A There would have been three business days. It was Monday through Wednesday that I moved out.

MR. BONDS: Your Honor, I'll pass the witness.

THE COURT: All right. Mr. Morris?

THE WITNESS: Take a break. I hope.

MR. BONDS: Your Honor, I'm sorry, can I take a ten-minute break? I think that I'm going to be through, but I don't know.

THE COURT: All right. I'll give you a ten-minute break.

MR. BONDS: All right. Thank you, Your Honor.

THE COURT: We're coming back at 2:15.

THE CLERK: All rise.

(A recess ensued from 2:06 p.m. until 2:16 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in Highland versus Dondero. Mr. Bonds, do you have more examination?

MR. BONDS: Your Honor, I have one question.

THE COURT: Okay.

MR. BONDS: And that's --

MR. LYNN: And one more witness.

MR. BONDS: And one more witness.

CROSS-EXAMINATION, RESUMED

BY MR. BONDS:

Q Do you think that Scott Ellington and Isaac Leventon were treated appropriately by the Debtor?

A No, I do not. I don't think they've been treated fairly, nor do I think other senior employees have been treated fairly. I've never seen a bankruptcy like this where, during complex unwinding of 20 years of various different entities and structures, relying on the staff, working them hard, working overtime, a lot of investment professionals like lawyers and DSI just putting their name on the work of stuff that was done by internal employees, getting to the end of the year, trying to pay people zero bonuses and retract prior years' bonuses, and try and come up with legal charges against

those people is unusual to this case and my experience, in the bankruptcies we've been involved in, where typically management teams get paid multiples of current salary to stay on and be the experts.

I also think they were put in difficult spots from the very beginning. It was Jim Seery that made Scott Ellington the settlement counsel six, seven months ago. It was a broadly-defined role that was never retracted, never adjusted, never modified, yet somehow he and Isaac violated it. I don't know. I haven't spoken to them since they've been terminated. They aren't allowed to speak to me, from what I hear. But I wish them luck in their claims.

THE COURT: Okay. You pass the witness?

MR. BONDS: Yes, Your Honor.

THE COURT: All right. Mr. Morris, do you have further examination?

MR. MORRIS: Just a few questions.

REDIRECT EXAMINATION

BY MR. BONDS:

Q Mr. Dondero, you knew about this hearing for some time, right?

A No.

Q When did you first learn this hearing was going to take place?

A Two days ago.

Q Two days ago?
A When was the depo, three days ago? Whatever.
Q And you didn't know prior to the deposition that we would be having a hearing today on the Debtor's motion for a preliminary injunction?
A No. I thought it was going to be postponed or canceled. I was waiting for the text last night.
Q You had an opportunity to call any witness in the world you wanted to today, right?
A I guess.
Q You could have called -- you could have called the chief compliance officer at the Advisors if you thought the Court should hear from him as to the compliance issues that you've testified to, right?
A I think their letters stand on their own.
Q Okay. So you didn't think that it was important for the Court to hear from Mr. Sowin directly, correct?
A Sowin is a trader.
Q I'm sorry. Who's the chief compliance officer of the Advisors?
A Jason Post, as far as NexPoint is concerned. He's the one that would have been behind the K&L -- K&L letters.
Q And he is not here today to testify, right?
A I think his letters stand on their own and I think everybody should read them, make sure they read them.

Q Okay. But Mr. Post is not here to answer any questions; is that right?

A I don't know if there are any questions beyond what's obviously stated in the letters. You should read the letters carefully. They're -- they're -- they talk about clear violations.

MR. MORRIS: Your Honor, I move to strike. It's a very simple question.

THE COURT: Sustained. That was another yes or no answer, Mr. Dondero. Go ahead.

THE WITNESS: I'm sorry.

BY MR. MORRIS:

Q Mr. Dondero, Mr. Post is not here to testify in order to explain to the Court what he thinks the regulatory issues are, correct?

A He's not here today.

Q And you could have called him as a witness, correct?

A Yes.

Q And you thought Mr. Ellington and Mr. Leventon were treated unfairly, right?

A Yes.

Q And there's no reason why they couldn't have come today to testify, correct?

A I guess they could have.

Q And there's no reason why anybody on behalf of the K&L

Gates clients couldn't have been here to testify, correct?
A I didn't deem it necessary, I guess.
Q Okay. You could have offered into evidence, at least offered into evidence, any document you wanted, right?
A Yes.
Q And you could have offered the judge, for example, the shared services agreement, the shared services agreements for which you gave the Court your understanding, right?
A Which shared services, the one that Seery gave Ellington three days ago or the original one from years ago?
Q Any of the ones -- any of the ones that you have referred to today. You could have given any of them to the judge, right?
A Correct.
Q And you didn't, right?
A I did not.
Q In fact, there's not a single piece of evidence in the record that corroborates anything you say; isn't that right?
A I -- I believe all those documents are in the record. They're just not in the record of this TRO. But they're all --
Q Oh.
A They're all in the record.
Q Do you remember that there was a hearing on December 16th? I think you -- you testified that you're fully aware of that

hearing that was brought by the K&L Gates Clients. Do you remember that?

A Yes.

Q Who testified at that hearing on behalf of the K&L Gates Clients? Dustin Norris?

A I believe -- I believe Dustin Norris testified.

Q Uh-huh. And what's Mr. Norris's role at the Advisors?

A He's one of the senior managers.

Q Is he a compliance officer?

A No.

Q Is he a trader?

A No. But he's one of the senior managers.

Q Okay. They could have called anybody they wanted, to the best of your understanding, right?

A I don't think they got a chance to. Wasn't it an abbreviated hearing?

Q They offered Mr. Norris as a witness. Do you understand that?

A I -- all I -- I wasn't there. I didn't attend virtually. I -- but I did know that Norris testified. But I don't know who else was called, wasn't called, was going to be called, was on the witness list. I have no awareness.

Q Okay. You were pretty critical of the trades that Mr. Seery wanted to make that you interfered to stop, right?

A I think he's subsequently done most of those trades.

Q And you called them preposterous because he wanted to do it around Thanksgiving or around Christmas, at least based on your testimony, correct?

A That's when it did occur.

Q And is it your testimony -- is it your testimony that every single person in the world who trades securities near a holiday is making a preposterous trade?

A I think it's amateur and not what an investment professional would do.

Q So you never trade on holidays; is that your testimony? You've never done it once in your life?

A Very rarely, unless there's another overriding reason. And there was no overriding reasons, period.

Q How would you know that when you didn't even ask Mr. Seery why he wanted to make the trades?

A I asked Joe Sowin, who asked Jim Seery. And Joe Sowin said that Jim Seery just said for risk reduction.

MR. MORRIS: I move to strike on the grounds that it's hearsay, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q You never asked Mr. Seery why he wanted to make the trades, correct?

A I'm not allowed to talk to Mr. Seery.

Q You certainly were around Thanksgiving; isn't that right?

A I don't know.
Q There was no TRO in place at that time, correct?
A That's true.
Q You're pretty critical of Mr. Seery and his capabilities; is that right?
A He's a lawyer. He's not an investment professional.
Q Did you object to his appointment as the CEO of the Debtor?
A No.
Q Have you made any motion to the Court to have him removed as unqualified?
A Not yet.
Q Okay. But with all the knowledge of all the preposterous things that he's been doing for months now, you haven't done it, right?
A No.
Q When you -- when -- before you threw the phone in the garbage, did you back it up?
A No.
Q Did it occur to you that maybe you should save the data?
A No.
Q You said that the only way you think you might be able to get information going forward is through a subpoena. Do I have that right?
A I mean, that's how it seems. I mean, it seems at every

turn -- and now with Scott Ellington being gone and Isaac being gone -- I have no idea how the Debtor is ever going to defend against UBS.

THE COURT: I did not --

THE WITNESS: I have no idea how --

THE COURT: I didn't hear the answer after with Ellington and Leventon being gone. I didn't hear the rest of the answer. Could you repeat?

THE WITNESS: I said I have no idea how the Debtor is ever going to defend itself against UBS. But I also have no idea how we're ever going to get any information or ever push forward any kind of settlement without having any access to information or anybody to talk to.

BY MR. MORRIS:

Q Do you trust Judge Lynn?

(Echoing.)

A Yes.

Q Is he a good advocate?

A Yes. If anybody returns his phone calls.

Q Do you recall that on October 24th Judge Lynn specifically asked my law firm to provide information on your behalf in connection with the Debtor's financial information, their assets and their liabilities?

A Yes.

Q Do you recall that the Debtor simply asked that you

acknowledge in an email between and among counsel that you would abide by the confidentiality agreement that was entered by the Court?

A I wasn't involved in those details.

Q Didn't you send an email in which you agreed to receive the financial information subject to the protective order that this Court entered?

A I'm sure I would. I just don't remember.

Q That was a condition that the Debtors made. That doesn't refresh your recollection?

A I'm not denying it. I just don't remember, and --

Q Okay. And --

A (overspoken)

Q I'm sorry, I don't mean to cut you off. And in fact, on December 30th, the day you were supposed to vacate the office, the Debtor voluntarily provided to Judge Lynn all of the information that had been requested on your behalf without the need for a subpoena, right?

A Yeah. It took a week. It's 40,000 pages of mixed gobbledygook that we're -- we're going through. But it should provide enough information for us to negotiate a pot plan if anybody so chose.

Q So you didn't need to (echoing) the 40,000 pages of financial information from the Debtor; all you needed was an agreement that you would abide by the protective order.

Correct?
A I think that was the first thing that was ever produced on request that I can remember. But yes.
Q And it was just a week ago, right?
A Yes.
MR. MORRIS: I have no further questions, Your Honor.
THE COURT: All right. Mr. Bonds, do you have anything else?
MR. BONDS: I do not, Your Honor, as to this witness. I have one other witness.
THE COURT: All right.
MR. MORRIS: Your Honor, I don't know who they plan on calling, but he's not on the witness list.
THE COURT: All right. Well, --
MR. BONDS: Your Honor, this other witness --
THE COURT: Just a moment. This concludes, for the record, Mr. Dondero's testimony. But, obviously, stick around, because we're going to have a lot to talk about when this is finished as far as the evidence.
All right. Now, who are you wanting to call that you did not identify?
MR. BONDS: I'd like to call Mike Lynn for the purpose -- or, to -- as a rebuttal witness.
THE COURT: Lawyer as witness?
MR. MORRIS: Your Honor?

THE COURT: Well, you know, first off, rebuttal of what? Rebuttal --

MR. MORRIS: Exactly. He's going to rebut his own client, Your Honor? He's going to rebut his own client? There's only been one witness to testify here. He was on their exhibit list. How do they call a witness to rebut their own client?

THE COURT: Yes. What -- I don't --

MR. BONDS: Your Honor?

THE COURT: Go ahead.

MR. BONDS: Mr. Morris testified or attempted to testify that the pot plan didn't gain any traction. We will submit Mike Lynn on that issue.

THE COURT: No.

MR. MORRIS: Your Honor?

THE COURT: I'm not going to allow a lawyer to testify to rebut lawyer argument. That's very inappropriate, in my view. So, not going to happen.

MR. LYNN: (garbled)

MR. BONDS: Your Honor, he would be a fact witness to discussions with the other side.

MR. MORRIS: Your Honor, I strenuously object. They're -- he's only rebutting -- my questions are not evidence. The only evidence in the record is Mr. Dondero's testimony. Mr. Dondero is their client. Mr. Dondero was on

their witness list. They should not be permitted to call any witness, with all due respect to Mr. Lynn, to rebut their own witness.

THE COURT: All right.

MR. BONDS: Your Honor, we're not rebutting our witness. We are rebutting the testimony that Mr. Morris gave.

THE COURT: Mr. Morris is a lawyer. He makes argument. He asks questions. He was not a witness today. Okay?

So if you want to say whatever you want to say as lawyers in closing arguments, then obviously you can do that. But I'm not going to allow a lawyer to be a witness to rebut something another lawyer said in argument or in a question. I -- it's -- so, I disallow that.

Anything else, then?

MR. BONDS: No.

THE COURT: Okay. And while we're talking about procedure, actually, Mr. Morris, it's the Debtor's motion, and I'm not even sure that's all of your evidence. So, do you have any more evidence as Movant?

MR. MORRIS: No, Your Honor. The Plaintiff and the Debtor rest.

THE COURT: All right. So, at the risk of repeating, now that the Movant has rested, it would be Mr. Dondero's chance to put on supplemental evidence. But what I'm hearing

from Mr. Morris is there were no witnesses identified on your witness list?

MR. BONDS: Other than Mr. Dondero, Your Honor.

THE COURT: Okay. All right. Well, was there any stipulated documentary evidence that -- that you had --

MR. BONDS: No, Your Honor.

THE COURT: All right. Well, I guess we're done with evidence.

Mr. Morris, your closing argument?

MR. MORRIS: All right. Before I get to that, Your Honor, I just want to make a very brief statement. When the Debtor objected to Mr. Dondero's emergency motion for a protective order, the Debtor stated that it sought discovery from Mr. Dondero to determine whether Mr. Dondero may have violated the TRO by interfering and impeding the Debtor's business, including by potentially colluding with UBS. After that motion was decided, both Mr. Dondero and UBS produced documents to the Debtor.

Based on the review of that information, the Debtor found no evidence that Mr. Dondero and UBS colluded to purchase redeemed limited partnership interests of Multi-Strat, nor any inappropriate conduct by UBS or its counsel.

The Debtor appreciates the opportunity to clear that part of the record.

THE COURT: All right.

CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

MR. MORRIS: Now, with respect to the motion at hand today, Your Honor, I want to take you back just about a month ago to December 10th, 2020. At that time, we had a hearing on the Debtor's motion for a TRO. The motion had been filed in advance. Mr. Dondero had filed an objection. He had concerns about the scope and the language of the terms of the proposed TRO.

And at that hearing, Your Honor, if you'll recall, you listened carefully to the arguments that were made on behalf of Mr. Dondero. You heard carefully -- you listened carefully to the proposed changes that he sought to make. And you went through that proposed TRO word by word, Paragraph 2 and 3, and you read them out loud, and you made decisions at that time as to whether the Court believed any portion of that was ambiguous or whether it was clear. You made determinations at that time whether or not the provisions were reasonable.

Mr. Dondero wasn't there. He didn't read the transcript. He has no idea what you said. But his lawyers were there, and they had an opportunity to object and they had an opportunity to make comments, and the order is what the order is. And for whatever reason, Mr. Dondero chose not to read it, or, frankly, even understand it, based on his testimony.

The fact is, Your Honor, the one thing that the evidence shows very clearly here is that Mr. Dondero thinks that he is

the judge. He believes that he is the decider. He believes that he decides what the TRO means, even though he never read it. He believes that he decides what exceptions exist in the TRO, even though he never read it.

He believes that he decides that it's okay to ditch the Debtor's cell phone without even seeking, let alone obtaining, the Debtor's consent. I guess he decides that he can ditch the phone and trash it without seeking to back it up or informing the Debtor.

Mr. Dondero believes that he gets to decide that it's okay to take a deposition from the Debtor's office, even when the Debtor specifically says you're evicted and you're not allowed to have access.

Mr. Dondero believes that he gets to decide that Mr. Seery has no justification for making trades, even though he couldn't take the time to pick up the phone or otherwise inquire as to why Mr. Seery wanted to do that.

Mr. Seery -- Mr. Dondero believes that he is the arbiter and the decision-maker and gets to decide to stop trades, notwithstanding the TRO, notwithstanding the CLO agreements that he is not a party to, that his entities are not a party to.

Mr. Dondero thinks that he gets to decide that the Debtor has breached the agreements with the CLOs. He gets to decide that the Debtor is in default under those agreements. He gets

to decide that it's perfectly fine for Ellington and Leventon to support his interests while they have obvious duties of loyalty to the Debtor.

It is not right, Your Honor. It is not right. I stood here, I sat here, about four hours ago, five hours ago, and told the Court what the evidence was going to show, and it showed every single thing that I expected it to show and everything I just described for the Court about Mr. Dondero's belief that he's the decider.

He's not the decider, Your Honor. You are. And you made a decision on June -- on December 10th that he ignored.

There is ample evidence in the record to support the imposition of a preliminary injunction. And Your Honor, I'm putting everybody on notice now that we're amending our complaint momentarily to add all of the post-petition parties, because this has to stop. The threats have to stop. The interference has to stop. Mr. Dondero can always make a proposal if he thinks that there's something that will capture the imagination and the approval -- more importantly, the approval -- of the Debtor's creditors. We have no interest in stopping him from doing that. He's got very able and honorable counsel, and he can go to them and through them any time he wants.

But the record is crystal clear here that, notwithstanding Your Honor's order, one entered after serious deliberation, is

of no meaning to him. And we'll be back at the Court's convenience on the Debtor's motion to hold him in contempt. It'll just be a repeat of what we've heard today, because, frankly, the evidence is exactly the same.

With that, Your Honor, unless you have any questions, the Debtor rests.

THE COURT: All right. I do not.

Mr. Bonds?

MR. BONDS: Your Honor, we would like to divide our time between Mike Lynn and myself. Is that a problem?

THE COURT: That's fine. Go ahead.

MR. LYNN: Are we on mute?

MR. BONDS: No.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. LYNN: Your Honor, I'm taking a leaf out of Mr. Phelan's book. I happened to read the confirmation hearing in the *Acis* case regarding what was referred to as Clients A, B, and C. And Mr. Phelan, who testified, really gave an oral argument to the Court which was very persuasive and very thorough. So I'm going to sort of do the reverse, because I hope that the Court would find useful some information regarding the pot plan about which you've heard many words spoken but very little to do with what that plan was or how it came about.

The pot plan was proposed by Mr. Dondero for the first

time in September of 2020, shortly after the conclusion of the first round of mediations. Though there had been versions of it before, and lesser versions, the pot plan was finally in the form that would more or less survive it in September. Under the pot plan, Mr. Dondero proposed to come up with $90 million of cash and $70 million in promissory notes, and that was to form a pot which creditors would share in.

The proposal was provided to the Debtor and then shared with the Committee. Mr. Seery responded with a degree, a degree only, of enthusiasm to the pot plan, and indeed provided a counter-term sheet to the pot plan. He also, so he said, and I believe him, approached the Committee and said this is a proposal to be taken seriously.

He proposed some improvements in his view to the pot plan. No response was received from the Creditors' Committee at that time.

After going back and forth with the Debtor -- and Mr. Seery, not unreasonably, was unwilling to propose the pot plan without some support on the Creditors' Committee -- I contacted Matt Clemente. We had a nice conversation. And at that time, Mr. Clemente raised two particular concerns. The $160 million, which creditors did not think was enough, was not enough, in part, because that included no consideration for the acquisition of promissory notes executed some by Mr. Dondero and some by entities controlled by Mr. Dondero, which

notes total approximately $90 million.

The second concern was that Mr. Dondero would get a release under the plan. During that call, I said the issue of the notes is subject to negotiation and might well result in a transfer of those notes, possibly with some amendments, to the pot, and that Mr. Dondero was prepared, in all likelihood, to forego a release.

Mr. Clemente agreed to get back to me. He did. And he said to me, I have talked to the Committee about this and they would like you to go to or they want you to go first to Mr. Seery, work off of his revised timesheet -- or term sheet, sorry -- and after you have reached an agreement with him, come to us, come to the Committee, and we'll negotiate with you.

Now, I might have agreed that that was a reasonable approach if there were a possibility that Mr. Seery would propose a plan without the agreement of creditors. But the way I took it was that the Committee was saying go make a deal with Seery and then we'll start negotiating, and we know, correctly, that Mr. Seery will not propose a plan that does not have our support.

So, effectively, we get to go through two rounds of negotiations, even though effectively everything that is in the estate, everything -- causes of action against Mr. Dondero, promissory notes from Mr. Dondero -- everything that

they would get under a plan or under a liquidation, they would get under the pot plan.

Now, I wanted you to know that, Your Honor, not because I'm now trying to get you or anyone else to sell the pot plan. But I think it's important that Your Honor know that Mr. Dondero's approach in this case has not been a hostile approach.

I know the Court had what it found to be an unsatisfactory experience with Mr. Dondero in the *Acis* case. But from the time I became involved in this case and Mr. Bonds became involved, we have been quiet, we have said nothing, and we've done virtually nothing in the case, up until the time after the mediation, when negotiations regarding a pot plan broke down.

Since that time, regrettably, there has been a good deal of hostility, and it's spreading. I would like to see it stop spreading. I will do what I can to make it stop spreading. But I need others to help me on that. And it's my hope that I can count on the Pachulski law firm, the Sidley law firm, and the firms representing the major creditors to help make that happen.

I do not think, and I would submit that it is not to the benefit of the estate, it is not to the likely workout of this case, that it would be best served by entering a preliminary injunction, which it appears to me prevents Mr. Dondero from

saying good morning to one of the employees of the Debtor that he knows.

It seems to me, Your Honor, that the injunction, by its terms, as Mr. Morris would have it, is an injunction that would prevent Mr. Dondero from discussing politics with Mr. Ellington. And it seems to me that an injunction that broad, that extensive, and one which lasts, as far as I can tell, until infinity, that such an injunction is not the right thing to do, given, if nothing else, the First Amendment to the United States Constitution.

That will conclude my presentation, and I will turn it over to the wiser and better-spoken colleague, John Bonds. Thank you, Your Honor.

THE COURT: Thank you. Mr. Bonds, what else do you have to say?

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. BONDS: Your Honor, has the Debtor met the requirements for the issuance of a preliminary injunction? We submit that they have not. And the Fifth Circuit's rules are fairly clear as to the awarding of a preliminary injunction.

First, let's look at the type of preliminary injunction that the Debtor would like you to enter today. It provides that Mr. Dondero cannot talk to any employee, regardless of what is being communicated. Mr. Dondero can pass an employee on the street, but he can't acknowledge the employee, with

whom he may have worked for years. Nor can he talk to his personal assistants, again, which he has worked with for years. Does that violate the First Amendment of the Constitution?

What about the shared services agreement? What about the pot plan which he is advocating as a means of reorganizing the Debtor? Not the liquidation proposed by the Debtor. Can Mr. Dondero communicate with creditors about the pot plan and the other proposals without violating the TRO or the preliminary injunction which deals with interfering with the Debtor's business?

Your Honor, I think it's important to note that a preliminary injunction is an extraordinary remedy that may only be awarded upon a clear showing that the Plaintiff is entitled to such relief. Plaintiffs are entitled to a preliminary injunction if they show, one, a substantial likelihood that they will prevail on the merits of their claims; two, a substantial threat that they will suffer an irreparable injury if the injunction is not granted; three, their threatened injury outweighs the harm to the estate or the other party; and four, the public interest will not be disserved, misserved, if the preliminary injunction is granted.

The party seeking the preliminary injunction bears the burden of persuasion on all four requirements. We believe

that the Debtor today has failed to carry its burden of persuasion of proof with regard to the second element, which I'm going to refer to as the irreparable injury requirement. In order to show irreparable harm to the Court, the Plaintiff must prove that if the District Court denied the grant of a preliminary injunction, irreparable harm would be the result. Injuries are irreparable only when they cannot be undone through monetary remedies. There is no evidence before the Court today that Mr. Dondero cannot respond to any judgment that is rendered against him by this Court.

Your Honor, this preliminary injunction does not involve real property. Unlike the *Saldana* case, this request for the issuance of a preliminary injunction involves personal property only. The request that Mr. Dondero cease and desist all contact with employees is just wrong and may violate the First Amendment of the Constitution, as I previously stated.

We have other concerns regarding the issuance of a preliminary injunction. We feel that the preliminary injunction is too broad. It lacks a beginning and an end. When does the preliminary injunction terminate? What about the former employees? Once they are terminated, can Mr. Dondero speak to them? What about the pot plan? Is it gone forever? Can Mr. Dondero talk with the mediators about the pot plan? Can Mr. Dondero speak with the members of the U.C.C.?

It is easy to criticize Mr. Dondero. Did he violate the TRO? We submit that he didn't and the Debtor says that he did. What matters going forward is the lack of evidence of irreparable harm.

Mr. Seery sure wants to keep Mr. Dondero from talking to anyone in this case. Why is that? Does Mr. Seery believe that the only way to get his liquidation plan confirmed is to keep Mr. Dondero from talking to anyone? How will the preliminary injunction help the Debtor's creditors? Does keeping Mr. Dondero from talking with anyone mean that there will be a greater return to the creditor body? Does precluding Mr. Dondero from talking about his pot plan mean that the creditors will take home more money on their claims, or does it eliminate the possibility that they may take home more money on their claims?

Your Honor, what we are seeing here today is an attempt by a group to destroy what Mr. Dondero has built over the last few years. That isn't the way Chapter 11 should work.

Just one last thing to keep in mind, Your Honor. Mr. Seery's plan is a liquidation of the Debtor. Mr. Dondero's pot plan is a reorganization of the Debtor.

Thank you, Your Honor.

THE COURT: All right. Mr. Morris, you get the last word. Anything in rebuttal?

MR. MORRIS: I would just point out, Your Honor, that

nobody here has objected to the Debtor's motion for the entry of a preliminary injunction except Mr. Dondero. While I appreciate that this is an adversary proceeding, anybody who felt strongly about the matter certainly could have moved to intervene. The Creditors' Committee could have moved to intervene. Mr. Clemente could have stood at the podium and begged Your Honor not to impose the injunction because he thought it was in the best interest of creditors to allow Mr. Dondero to interfere with the Debtor's business and to speak with their employees. Nobody has done that, Your Honor. Nobody's here speaking on behalf of Mr. Dondero. Nobody's here to testify on his behalf. Nobody's -- there's no evidence in the record that supports or corroborates anything that he said at all, Your Honor.

Unless Your Honor has any specific questions, the Debtor is prepared to rest.

THE COURT: All right. I do not have any follow-up questions.

All right. I have a lot to say. I'm sorry, I apologize in advance, but I've got a heck of a lot to say right now. I'm going to give you a ruling on the motion before me, but I've got a lot to add onto that, so I hope all the key parties in interest are listening carefully. Mr. Bonds, in the video, I can only see you. I hope Mr. Dondero is just right there out of the video camera view. Okay, there you are. I wanted

to make sure you didn't wander off to take a bathroom break or anything. So, again, I have a whole lot to say here today.

First, I'm going to rule on the motion. The Court does find there is sufficient compelling evidence to grant a preliminary injunction that is completely consistent with the prior TRO. Okay? So, specifically, the Court today is going to continue to prevent Mr. Dondero from (a) communicating in any way, directly or indirectly, with any of the Debtor's board members -- I think that's really Strand board members -- unless Mr. Dondero's counsel and counsel for the Debtor are included. Okay. I'm saying those words slowly and carefully. There is no bar on Mr. Dondero talking to the board about a pot plan or anything else in the universe Mr. Dondero wants to talk to them about. There's just a preclusion from him doing it without his counsel and the Debtor's counsel present. Okay?

I did that before and I'm doing it now because I've seen concerning evidence that some communications to Mr. Seery and others had an intimidating tone, a threatening tone one or two times, an interfering tone. So, guess what, we're just going to have lawyers involved if any more conversations happen. Okay.

So (b) the preliminary injunction, just as the TRO did, is going to prevent Mr. Dondero from making any threats of any nature against the Debtor or any of its directors, officers,

employees, professionals, or agents. Okay. It's almost embarrassing having to say that or order that with regard to such an accomplished and sophisticated person, but, you know, I saw the evidence. I've got to do what I've got to do. You know, words in a text like, Don't do it, this is your last warning, and some of the other things, that has a threatening tone, so I'm going to order this.

Third, the preliminary injunction will prevent Mr. Dondero from communicating with any of the Debtor's employees except as it specifically relates to shared services provided to affiliates owned or controlled by Mr. Dondero.

Now, I'm going to elaborate in a couple of ways here. I think in closing argument there was a suggestion that he can't even talk to his friend, Mr. Ellington, about anything. Well, I heard today that Mr. Ellington and Mr. Leventon are no longer employees of the Debtor, so actually that's not an issue. But while this is very restrictive, while this prevents Mr. Dondero from engaging in small talk with Debtor employees about the weather or the football game or whatever, it's regrettable, but I feel like I'm forced to order this now, because, again, the communications that were put in the record. Okay? We just can't take any chances, as far as I'm concerned, with regard to there being potential interference with the Debtor's operations that might be harmful or contrary to creditors' interests.

Fourth, the preliminary injunction, just like the TRO, will prevent Mr. Dondero from interfering with or otherwise impeding the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of any plan or alternative to the plan.

Now, I understand the argument that this is pretty broad and might be, I don't know, subject to some disputes regarding was it interference, did it impede the Debtor's business or not? You know what, if you follow the other prongs of the preliminary injunction, that you don't talk to the board without your counsel, Mr. Dondero, and the Debtor's counsel, and you don't talk to Debtor's employees except with regard to matters pertaining to the shared services agreement, and, bottom line, if you just run everything by your attorneys, you'll be okay. We won't have this ambiguous, vague, problematic territory.

Fifth, I will go ahead and, for good measure, belts and suspenders, whatever you want to call it, prevent Mr. Dondero from otherwise violating Section 362(a) of the Bankruptcy Code.

Now, I read the response filed at 9:30 last night by Mr. Dondero's counsel. It's a good response. It makes legal arguments about that being, you know, it just being too vague.

Well, to the contrary, it just restates what's already in the Bankruptcy Code, right? Persons are prohibited from violating Section 362(a) of the Bankruptcy Code. If anything, it's the sky is blue, right, just stating what is true. But I understand Debtor wanting some clarity in an order, because we want you to take this seriously, Mr. Dondero, and not just do something and then say, well, you didn't know what was in the Code. You know, you need to consult with your lawyer. That's going to be in there.

Bottom line, I want that language in there because, Mr. Dondero, I want you to see an order that this Court expects you to comply with the Bankruptcy Code. And again, if you don't understand, if you're unsure whether you can take action *x* or *y*, consult with your very capable lawyers.

I note that if you listened carefully to these words, there was nothing in here that stopped Mr. Dondero from talking to the Creditors' Committee about a pot plan. Nothing in this injunction, nothing in the previous TRO, ever prohibited that.

Last, with regard to the ruling -- and again, I've got a lot more to say when I'm done -- I am going to further enjoin Mr. Dondero from what we said in the TRO: causing, encouraging, or conspiring with any entity controlled by him and/or any person or entity acting on his behalf from directly or indirectly engaging in any of the aforementioned items.

This is not an injunction as to nonparties to the adversary proceeding. It is an injunction as to Mr. Dondero from doing the various enjoined acts that I previously listed under the guise of another entity or a person that he controls.

Again, if you're dealing with and through your attorneys, Mr. Dondero, I don't think this will be hard to maneuver.

I guess I'm actually not through with my ruling yet. I do want to add that the Court rules that the injunction shall last through the time of confirmation of a plan in this case unless otherwise ordered by this Court.

And as to the legal standards, I want to be clear for the record that the Court believes this injunction is necessary to avoid immediate and irreparable harm to the Debtor's estate and to its reorganization prospects. I believe that there's a strong likelihood the Debtor will succeed in a trial on the merits of this adversary proceeding. I believe the public interest strongly favors this injunction. And I believe the balance of harms weighs in favor of the Debtor on all of these various issues.

Again, I want to reiterate, the intimidation and interference that came through in some of these email and text communications was concerning to the Court and is a motivation for this preliminary injunction.

Now, I'm going to add on a couple of things today. The first thing I'm going to add on -- and I want this, Mr.

Morris, in the order you submit. You didn't ask me for this, but I'm going to do it. I'm going to order you, Mr. Dondero, to attend all future hearings in this bankruptcy case unless and until this Court orders otherwise. And I'm doing this -- it's not really that unusual a thing for me to do. I sometimes order this in cases when I'm concerned about, you know, is the businessperson paying attention to what's going on in the case and is he engaged, is he invested, is he available when we need him?

In this case in particular, the evidence was that you didn't read the TRO. You were not aware of its basic terms and you didn't read it. Okay? So that was what sent me over the edge as far as requiring this new element that you're going to attend every hearing. Obviously, we're doing video court, so that's not that much of a burden or imposition. You can pretty much be anywhere in the world and patch in by video, since we're in the pandemic and not doing live court. But I think it's necessary so I know you hear what I rule and what goes on in this case.

I will tell you that I was having a real hard time during your testimony deciding if I believe you didn't read the TRO or know about the different things that were prohibited. You know, I was thinking maybe you're not being candid to help yourself in a future contempt hearing, or actually maybe you're being a hundred percent honest and candid but you're

kind of hiding behind your lawyers so that you can argue the old plausible deniability when it suits you.

But no more. No more. I'm not going to risk this situation again of you not knowing what's in an order that affects you. So you must be in court by video until I order otherwise.

Second, and I regret having to do this, but I want it explicit in the preliminary injunction that Mr. Dondero shall not enter Highland Capital Management's offices, regardless of whether there are subleases or agreements of Highland affiliates or Dondero-controlled entities to occupy the office, unless Mr. Dondero has explicit written permission that comes from Highland's bankruptcy counsel to Dondero's bankruptcy counsel. Okay? If he does, it will be regarded as trespassing.

And, I don't know, are there security guards on the premises? I mean, gosh, I hate to be getting into this minutia, but -- well, I just want it explicit in the order that Mr. Dondero, I'm sorry, but you can't go to these offices without written permission. And again, that can only be given from Debtor's counsel to Mr. Dondero's counsel. Okay? So it's going to be trespassing. You know, someone can call the Dallas Police Department and have you escorted out. Again, I hate having to do that. It's just, it's embarrassing for me. I think it's embarrassing for everyone. But I'm backed up in

that corner.

Next, I am going to ask that it be clear that Mr. Dondero can deal with the Unsecured Creditors' Committee and its professionals with regard to talking about a pot plan.

And next, I'm going to add -- and I think, Mr. Morris, you requested this at some point today in oral argument -- Mr. Ellington and Mr. Leventon shall not share any confidential information that they received as general counsel, assistant general counsel for the Debtor, without Debtor's counsel's explicit written permission. Okay? So we've got that in writing.

And, you know, that's a little awkward because they're not here, they weren't parties to the injunction, but they were Debtor employees until recently. If they want to risk violating that and come back to the Court and argue about whether they got notice and whatnot of that, they can argue that, but I want it in the order regardless.

So that is the ruling. And now I want to kind of talk about a few other things. And before we're done here, Mr. Morris, I'll ask do you have questions, does Mr. Bonds have questions, does anyone have questions about the ruling. But I want to talk about a couple of things. And again, I hope that I'm coming through loud and clear, Mr. Bonds, in your office for Mr. Dondero to hear this. It's really, really important that he heard what I'm about to say. I'm going to say some

kind of unpleasant things and then I'm going to say some hopeful things, okay?

Mr. Dondero? Okay. Mr. Dondero, I'm going to -- Mr. Morris, you've got your hands on your head. Did I miss something?

MR. MORRIS: No. I was just surprised to see Mr. Dondero on his phone. I apologize, Your Honor.

THE COURT: Oh, my goodness. Were you on your phone, Mr. Dondero?

MR. DONDERO: No, I was not.

THE COURT: Okay. I want you to listen to this really closely, and then I promise I'm going to have something hopeful to say after this very unpleasant stuff. You know, I keep a whiteboard up at my bench. I don't know if you can read it. But sometimes I hear something in a hearing and I think, okay, this is one of my major takeaways from what I heard today. And I've got two, I've got two big takeaways here. Number one on my whiteboard is Dondero's spoliated evidence. Game-changer for all future litigation. Okay.

MR. DONDERO: I'm sorry. I didn't hear that. I didn't hear that. Could you repeat that, please?

THE COURT: Mr. Dondero, spoliated evidence, game-changer in future litigation.

Okay. Let me tell you, the throwing away of the phone, that was the worst thing I heard all day. That was far and

away the worst thing I heard all today. I don't know what I'm going to hear down the road to fix this, but if it's really gone, let me tell you how bad this is. We have all sorts of Federal Rules of Civil Procedure that talk about this being a bad thing, but I wrote an opinion a couple years ago dealing with spoliation of electronic evidence, and I think it might be helpful for everyone to read. It was called *In re Correra*, C-O-R-R-E-R-A. I have no idea what the cite on it is. But in this case, *Correra*, we had a debtor who had a laptop, and he gave the laptop to his personal assistant, who took it away to another state. And at some point during the case, parties discovered, oh, there's a laptop that may have a treasure trove of information. Who knows? Maybe it does; maybe it doesn't. But there's a laptop that we just now learned about that the personal assistant has.

And so I issued an order that she turn it over, and there were subpoenas and depositions, blah, blah, blah. Long story short, the evidence ended up being that she deleted everything on the laptop, and then -- this would almost be funny if it wasn't so serious -- she downloaded thousands of pictures of cats onto the laptop. I kid you not, cats. Meow, meow, cats. And she downloaded a hundred-something full-length movies. And we had two days of forensic experts come in and take the witness stand and tell me about how, okay, this is like an amateurish -- you've talked about amateur hour today -- this

is kind of an amateurish way of deleting data, right. You first delete all the files on the laptop and then you cover over all the space to make sure the information is not retrievable. You know, this genius ended up retrieving some of the information.

But the long story short is I sanctioned the debtor and his assistant jointly and severally. You'll have to go back and look at the opinion. I'm pretty sure it was over a million dollars. And I can't remember if that was attorneys' fee-shifting only, or monetary, like penalty on top of the attorneys' fees-shifting. I just can't remember. But maybe poor Tara needs to be advised of that opinion, too. I mean, --

But the other reason I put game-changer in future litigation is, in my *Correra* case, it wasn't just the monetary million-dollar sanction or whatever it was; it was a game-changer in future litigation because the adverse party to the debtor ended up arguing -- and it was the state of New Mexico, by the way -- they ended up saying, in all future litigation, we want you -- some adversaries, we want you to make an adverse inference. In other words, for all of these elements that we're trying to prove in our fraudulent transfer litigation and whatever else was going on, we want you to make an adverse inference that there would have been evidence there on that laptop that would have supported some of our causes of

action and it was destroyed to keep us from having that evidence.

And they brought forth all kinds of case law. It's a hard area. It's a really, really hard area. But I ended up -- again, it's not in the main opinion. It was in subsequent orders. I ended up saying, yeah, I think you've met the standard here to draw adverse inferences.

So, again, this is a very unpleasant message for me to deliver today. But the destruction of the phone is my biggest takeaway of concern today, how that might have ramifications. You know, there are other bad things, too, about that. I'm not even going to go there right now. But the, you know, Title 18, you can ask your lawyer what that means, but okay.

My second big takeaway before we get to the hopeful stuff is -- and this is kind of harsh, what I'm about to say -- but Ellington and Leventon maybe care more about you, Mr. Dondero, than their law license. You know, I guess it's great to have people in your life who are very, very loyal to you. I mean, loyalty is a wonderful thing. But I am just so worried about things I've heard. Again, the phone and in-house lawyers. The biggest concerns in my brains right now. I have worried about them for a while.

You all will -- well, Mr. Dondero, you might not know this. But we had a hearing a few months ago, maybe September, October, where the Creditors' Committee was trying to get

discovery of documents. And we had some sort of hearing, maybe a motion to compel production. And we had many, many entities that you control file objections: NexPoint, NexBank. I can't even remember. We just had a whole slew. CLO Holdco. Many, many of these entities objected. And I was trying to figure out that day who was instructing them. And oh my goodness, I hope the in-house layers are not involved in this document discovery dispute, because, you know, they have fiduciary duties. And are -- you know, is it -- it feels like it's breaching a duty to the bankruptcy estate when it's in the bankruptcy estate's best interest to get these documents if you're meanwhile hiring lawyers for these other entities, Holdco, et cetera, and saying, Fight this.

I never really pressed it very hard back then, but I raised the issue and I said, I'm really, really concerned about this. And I continue to be concerned about it. I had experiences with Mr. Ellington in the *Acis* case where he testified on the witness stand, and later it looked a heck of a lot like he might have committed perjury. I hate to use such blunt terms. But I let it go. I'm just like, you know, I'm not going to -- you know, I'm going to just hope for the best that he misspoke.

But I'm getting a really bad taste in my mouth about Ellington and Leventon, and I hope that they will be careful and you will be careful, Mr. Dondero, in future actions.

Is Mr. -- I can't see Mr. Dondero. I want to make sure he's not on the phone. Okay. Okay. Thank you.

So where was I going to head next? I guess I want to say a couple of things now that I would describe as a little bit more hopeful, and that is pertaining to this whole pot plan thing.

You know, I tend to think, without knowing what's being said outside the courtroom, that a pot plan would be the best of all worlds, okay, because the plan that we have set for confirmation next week, I understand we have a lot of objections, and if I approve it, if I confirm the plan, we're going to have a lot of appeals and motions for stay pending appeal, and no matter how that turns out, we're going to have a lot of litigation. Okay? You know, we're going to have adversaries. And we have a not-very-workable situation here where we have these Dondero-controlled affiliates questioning Mr. Seery's every move.

I would love to have a pot plan that would involve, Mr. Dondero, you getting to keep your baby, okay? I acknowledge, everyone here acknowledges, you are the founder of this company. This is your baby. You created a multi-billion-dollar empire, okay? I would be shocked if you didn't want to keep your baby. Okay? If there was a reasonable pot plan, I would love it.

But I'm telling you, the numbers I heard didn't impress me

a heck of a lot. I'm not an economic stakeholder. It's not my claim that would be getting paid. But I can see where these Creditor Committee members, they're not going to think $160 million -- $90 million in cash, $70 million in notes, or vive-versa -- is nearly enough. Okay?

So I am going -- what just happened? What just happened? I lost Mr. Dondero. Okay. This is getting kind of humorous, almost.

Okay. I am going to order that between now and the end of the day Tuesday there be good-faith, and I'll say face-to-face -- Zoom, WebEx, whatever -- negotiations between Mr. Dondero and his counsel and at least the Committee and its professionals regarding this pot plan.

Now, the train is leaving the station next Wednesday, okay? If we don't have Creditors' Committee and Debtor and Dondero rushing in here saying, Please continue the confirmation hearing next Wednesday, if we don't have like unanimous sentiment to do that, you know, this is a 15-month-old case, I'm going to go forward with the plan that's on file.

And it's been a long, expensive case. I had great mediators try to give it their best shot to get a grand compromise. I just, I'm not going to drag this out unless you all tell me Wednesday morning, We want you to continue this a week or two.

And let me tell you -- this may be the stars lining up, or it may not be -- I was supposed to have a seven-day trial starting the week after next, and then I was supposed to have a four- or five-day day trial starting immediately after that. And all of those lawyers came in and asked for a continuance because of COVID. They wanted a face-to-face trial, and so I've put them off until April.

So if you wanted to postpone the confirmation hearing to the following week or even the following week, I have the gift of time to give you. But I'm not going to do it lightly. I'm, again, I'm just going to order face-to-face meetings. And I said Dondero and his counsel and the Committee and its professionals. You know, if -- I'm not slighting the Debtor here or Mr. Seery, but I'm kind of taking a cue from what Mr. Morris, I think I heard you say, that at this point it's the Committee, it's the Committee's money, and I think that's the starting place. And if they want to join the Debtor in at the beginning or midway through, you know, wonderful, but I think it needs --

MR. POMERANTZ: Your Honor, this is Jeff -- this is Jeff Pomerantz. I hate to interrupt, and I never do that to a judge, but I did have something to say in my comments about a continuance that we've talked about with the Committee and some other developments in the case.

THE COURT: Oh.

MR. POMERANTZ: I'm happy to wait. But it has -- it has nothing to do with the comments you said, although, as I think you've heard from me before, the Debtor has been a supporter, a supporter of a pot plan. Mr. Seery has done a tremendous amount of work working with Mr. Dondero, working with Mr. Lynn, to try to make that happen. And if the Committee is willing to engage in a pot plan, we would definitely support that. Because we do agree with Your Honor that, absent a pot plan, we are looking at a lot of litigation.

Some of the issues you're going to have to deal with at the confirmation hearing if we do not have a peace-in-the-valley settlement is exculpations, releases, moratoriums on litigation, extensions of your January 9th order --

THE COURT: Uh-huh.

MR. POMERANTZ: -- with respect to pursuing certain people.

So, we get it, and we've gotten it from the beginning. And Mr. Seery, sometimes even at a fault, has been singlehandedly focused on trying to get that done. It's just unfortunate where we are here.

But having said that, I wanted to first apprise the Court of a recent major development in the case. I'm pleased to report that the Debtor and UBS have reached a settlement in principle which will resolve all of UBS's claims against the

estate, all of UBS's claims against Multi-Strat. The parties are working on documentation. The settlement is subject to internal approvals from UBS, but we've been led to believe those approvals will occur, and we would hope to file a Rule 9019 motion in the near future.

I'm sure Your Honor is quite pleased to hear that. The UBS matters have taken a substantial amount of time. And with the settlement of UBS's claims, the only material unresolved claim, unrelated to Mr. Dondero or the employees, are Mr. Daugherty. And Mr. Seery will continue to work with Mr. Daugherty to try to settle that.

THE COURT: Okay.

MR. POMERANTZ: With respect to the scheduling, with respect to the scheduling, Your Honor, there are three significant matters on for hearing on the 13th. The first is the Debtor's motion to approve a settlement with HarbourVest, which Mr. Dondero is contesting. Depositions are being conducted on Monday, and we anticipate an evidentiary hearing in connection therewith.

The Debtors, as Mr. Morris indicated earlier on in the hearing, have also filed a complaint and a motion for a temporary restraining order against certain of the Advisors and Funds owned and controlled by Mr. Dondero which relate to the CLO management agreements for which Your Honor has heard a lot of testimony today. We also expect that TRO to be

contested and for the Court to have an evidentiary hearing.

And as Your Honor mentioned, the confirmation of the plan was scheduled for Wednesday, and there were 15 objections. I would point out, Your Honor, all but four of which were Mr. Dondero, his related entities that he owns or controls, and employees or former employees.

The Court previously gave us time on the 13th and the 14th, I think anticipating that we would have a lot and it may be necessary to go into two days. However, Your Honor, those two days are not going to be enough to deal with all the issues that we have before Your Honor.

So what we suggest, and we've spoken to the Committee and the Committee is supportive, that we continue confirmation to a day around January 27th. This will enable the Debtor to not only -- and the Committee -- not only to take Your Honor up on what you'd like to see accomplished in the next few days. I'm sure the Debtor is supportive and will be supportive, and we hope the Committee will engage in good-faith negotiations, and if there's a way to do a pot plan, we are all for it. It'll give time for that to happen.

But at the same time, and I think what you'll hear from Mr. Clemente, that we're willing to give a continuance, we all know that if there is not a settlement to be had, if there is not a pot plan to be had, this case has to confirm, it has to exit bankruptcy, and at least from the Debtor's perspective, a

lot of protections will have to be in place that basically this has not just been a pit stop in Bankruptcy Court and we return to the litigation ways that Highland is involved in.

So, Your Honor, we believe that the two evidentiary hearings on for next week probably will fill up both days. We would suggest that the first day be the complaint and the TRO against the Advisors and the Funds for the 13th, and the 14th be the HarbourVest.

We also recognized as we were preparing for today, Your Honor, looking ahead, that we thought it was not fair for us, although we know Your Honor works tirelessly and as hard as anyone on this hearing and that Your Honor would be prepared for confirmation and would be prepared for each of those trials, given the gravity of these issues, the extensive pleadings, pleadings that you would get in confirmation on Monday from the Debtor, that it made sense to continue the hearing.

So, again, fully supportive of Your Honor's mandate to try to see if we could work things out, fully supportive of a continuance until the 27th, if that date works for Your Honor, but we believe we do need to go ahead with the two matters that are on for calendar next week.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. May I be heard briefly?

THE COURT: Oh my goodness. Who do you represent,

Mr. Rukavina?

MR. RUKAVINA: And I apologize -- Your Honor, I am the new counsel who will be representing the Funds and Advisors. I will probably be taking the laboring oar at confirmation.

I apologize I'm not wearing a suit and tie. I did not anticipate speaking right now.

I support -- to the extent that that's an oral motion for continuance by Mr. Pomerantz, I certainly support that. I would suggest that the Court give us an understanding of that today, because we do have depositions and discovery lined up which we can then push if the hearing on confirmation is pushed to the 27th. And we have no problem going forward on the other matters on the 13th.

So, I am co-counsel to K&L Gates, Your Honor, so whoever the K&L Clients are, they're now my clients as well. I just wanted to be heard briefly that we support the recommendation by Mr. Pomerantz and just urge that the Court give us finality on that issue today so that we're not burning the midnight oil, many sets of lawyers preparing for confirmation on the 13th.

Thank you for hearing me, Your Honor.

THE COURT: All right. So, just to be clear, the proposal is that we go forward next Wednesday on the newest request for a TRO with regard to -- is -- the CLO Funds and

the Advisors. I'm forgetting the exact names. And then that would take likely the whole day, but whether it does or does not, we would roll over to Wednesday of next week -- that'd be the 14th -- to do the HarbourVest. It's a compromise motion, right? Is there anything else?

MR. POMERANTZ: No, correct, it's the compromise motion, Your Honor. There are two pending objections on this and discovery scheduled for Monday.

THE COURT: All right. Well, as far as --

MR. CLEMENTE: Your Honor?

THE COURT: Yes, who is that?

MR. CLEMENTE: Oh, Your Honor, it's Matt Clemente at Sidley on behalf of the Committee. I'm here, and I thought maybe I'd offer just a couple of comments at this point, but I'm happy to hold them.

THE COURT: Well, --

MS. SMITH: And Your Honor, this is Frances Smith. I would also like to be heard before you wrap up.

THE COURT: Okay. Well, I guess generally I want to know, does anyone have any objection -- I can't imagine they would -- but any objection to pushing confirmation out to around the 27th? I'm going to say that because I have an issue middle of the day the 28th. If we do it the 27th, I could only go a day and a half, okay? I have to go out of town the evening of the 28th, and I would be out the 29th as

well. That's Thursday and Friday. So we'll talk about that. But anyone, Mr. Clemente or anyone else, want to say anything about continuing the confirmation?

MR. CLEMENTE: Your Honor, it's Matt Clemente at Sidley. No, Your Honor, we're supportive of that schedule.

And Your Honor, just briefly, I heard my name discussed quite a bit at this hearing as well as the Committee. I'm not going to get into it unless Your Honor would like me to, but let me be very clear: The committee has taken very seriously the pot plan proposals that Mr. Dondero has presented, and there's much more to the discussion other than what Mr. Lynn suggested in his remarks.

So I'm not going to get into all that unless Your Honor thinks it's necessary. I think it's of no moment here. But I did want Your Honor to know that we have carefully considered the pot plan proposals and have communicated a variety of issues about that to Mr. Lynn and will continue to take the direction of Your Honor and engage on a pot plan, Your Honor. But I did not want there to be any suggestion that we did not take it seriously and that there was much, much more consideration and discussion about it than what was suggested.

THE COURT: Uh-huh.

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: All right.

MS. SMITH: Your Honor, this is Frances Smith.

THE COURT: Who do you represent, Ms. Smith?

MS. SMITH: Your Honor, we were recently retained by the four senior employees: Tom Surgent, Frank Waterhouse, Scott Ellington, Isaac Leventon, along with Baker & McKenzie, and I believe we have the Baker & McKenzie lawyers Deb Dandeneau and Michelle Hartmann on the line.

Your Honor, we have listened to the whole hearing. And I was not going to make an appearance. I was following your instructions and listening carefully. But Your Honor, I -- first of all, we hate to be before you for the first time in a discovery dispute. We did file a very limited objection to the plan because of the disparate treatment of our clients, which we are not arguing today, of course. We received -- it is our usual practice, Your Honor -- you've known me for a long time -- to cooperate on having witnesses appear. We got -- we were notified very late Tuesday that the Debtor's counsel would like two of our clients to appear. We made what we thought was a reasonable request for a copy of the transcript from the deposition. We were invited to the deposition and then told we could not attend, or our clients could not attend. When we offered to make it lawyers-only, they said no. So we did not produce our clients without a subpoena.

Our clients have not been evading service. As far as we know, they were each attempted service one time, late

Wednesday, when they were -- around dinnertime. Mr. Leventon was home all day today. Didn't go any -- or yesterday. Didn't go anywhere. Was not served. Wasn't served this morning. The same, as far as we know, with Mr. Ellenton.

Your Honor, on the order that you just entered, I am a little unclear of where your findings of fact stopped. First of all, I do not think that you can enjoin Mr. Ellenton and Mr. Leventon. They are not parties to the adversary proceeding.

You know, we did some very quick research. There's a Seventh Circuit case, a district court may not enjoin nonparties who are not either acting in concert with an enjoined party nor in the capacity of agents, employees, officers of the enjoined party. Mr. Ellington and Mr. Leventon are not agents, employees, officers of Mr. Dondero. So I think that, Your Honor, you cannot make that ruling.

Of course, you can rule that Mr. Dondero cannot talk to Mr. Leventon and Mr. Ellington. That might be a way to fix that one part. But as nonparties, I don't believe that you can enjoin them.

Also, Your Honor, there was just no evidence against them to support that. Out of more than two dozen exhibits, there was one mention of Mr. Leventon, where all he did was give Mr. Dondero Matt Clemente's phone number. And you yourself ruled, Your Honor, that Mr. Dondero could speak with the Committee,

so that wouldn't even have been a violation of your orders. There's three related to Mr. Ellington, but no evidence of confidential information.

And, Your Honor, I'm very concerned about the comments that you made about Mr. Ellington and perjury. I just want to make sure that it's clear on the record that those were not findings of fact. That did not -- there was no evidence about that today. And I understand Your Honor's frustration. I was -- but I just want to be very clear on the record that those were not findings of fact that you were making during that part of your comments. I was a little unclear about where the ruling exactly stopped when you said you wanted to add onto the order and then you were going to make a few more comments.

So that's all I have, Your Honor.

THE COURT: Okay.

MS. SMITH: Thank you for listening and --

THE COURT: Thank you. Fair comments, one and all. I'm first going to tweak. I was concerned. You heard me express concern about, you know, Ellington and Leventon aren't parties to this adversary. Not here. So here's -- Mr. Morris, I assume you're the scrivener. Let's change what I said earlier and have the injunction read that Mr. Dondero shall not request that Mr. Ellington or Mr. Leventon share any confidential information they received as general counsel or assistant general counsel for the Debtor without Debtor's

counsel's explicit written permission, nor accept any confidential information that the two of them may have received as general counsel or assistant general counsel for the Debtor. Okay? So the injunction is --

MR. MORRIS: Your Honor, if I may, --

THE COURT: Who?

MR. MORRIS: Your Honor, if I may, that is not sufficient for us, because that means that they can actually share it with him as long as he doesn't request it. I'm a little surprised --

THE COURT: No. You didn't hear the accept -- the last part.

MR. MORRIS: Okay.

THE COURT: I added on at the end, nor shall Mr. Dondero accept any confidential information. They -- he shall not request that they share it, nor shall he accept it. Okay? I --

MR. MORRIS: So, but that -- my concern is that that makes Mr. Dondero the arbiter of what's confidential and what's privileged. And I think that's improper. I think it's really reasonable, and I'm surprised -- you know, we're all advocates here, so I take no issue with counsel, but the order was going to be pretty simple: Don't disclose privileged or confidential information. If they don't like that, that's fine. Just bar Mr. Dondero from speaking to either one of

them, period, full stop. Because we should not be in a position where he doesn't request it but somehow they send it to him. It is confidential.

I mean, who's deciding what's confidential here? Mr. Ellington? Mr. Leventon? Mr. Dondero? Just stop their communication. Mr. Dondero is subject to the Court's order. He's the one who's subject to this motion. Bar him from speaking to either one of them. It's a very -- very simple solution.

MR. BONDS: Your Honor, I agree that it's a simple solution. It's, I mean, not correct to assume that Mr. Dondero is in any way going to breach his obligations to the Court or to Mr. Ellington and Mr. Leventon. I don't see where -- what we're talking about.

MS. SMITH: Also, Your Honor, I have to object to him disparaging my clients that way. There's been no evidence that they improperly shared any information. They are licensed lawyers and they know the Rules of Professional -- they know the rules of professionalism, so --

THE COURT: Okay. I, you know, I didn't make a finding earlier when I held out my two giant takeaways, to get to your later question, no findings. But I really hope you share with them everything I said, the concerns I expressed. Maybe get the transcript.

MS. SMITH: Absolutely, Your Honor.

THE COURT: Because I have huge concerns about conflicts of interest here. Okay? Huge, huge concerns. I had them back when we had the discovery fight, Committee wanting documents, and, you know, and I still have them. You know, did Ellington know about the TRO?

MS. SMITH: Understood, Your Honor.

THE COURT: Okay. So let me backtrack. We already had a TRO that prevented Mr. Dondero from talking to any employees of the Debtor unless it was about shared services agreement.

So, Mr. Bonds, I'm going to flip it back to you on this one. Why shouldn't I at this point just say, okay, guess what, no talking to Mr. Leventon or Ellington for the time being? Why --

MR. BONDS: First of all, --

MS. SMITH: Your Honor, that's acceptable to us.

THE COURT: Okay. What's wrong with that, Mr. Bonds?

MR. BONDS: Your Honor, we don't believe that Mr. Dondero has violated the TRO.

And secondly and more importantly, we don't believe that there's any way that you can enter an order that singles out two former employees. I mean, that's bizarre.

THE COURT: If I'm concerned that it's thwarting the reorganization efforts and there are conflicts of interest here, why can't I?

You know, this is -- I hate to say it, but I feel like I've been in the role of a divorce judge today. We have very much a corporate divorce that has been in the works, unless we get this pot plan on track, okay, and I'm a judge having to enter interim orders keeping one spouse away from the other, keeping one spouse out of the house, keeping one spouse away from the kids. It's not pleasant at all. But I don't -- the more I think about it, the more I have authority to do it just to protect, to protect the nest egg here.

MS. SMITH: Your Honor, we are perfectly fine with you enjoining Mr. Dondero from speaking to our clients, and we will convey that to our clients.

THE COURT: Okay. Mr. Bonds, I can't hear you.

MR. BONDS: I'm sorry, Your Honor. What evidence is there of irreparable harm as to Mr. Dondero talking with either Mr. Leventon or Mr. Ellington?

THE COURT: Okay. Do I need to parse through the communications I saw? Do I need to parse-

MR. BONDS: Yeah, I think so. I mean, I don't understand.

THE COURT: Okay. I never authorized Mr. Ellington to be the settlement lawyer or whatever, okay? I never would have, okay? And maybe Mr. Seery, you know, said something to -- early on in the case to make him think he had that authority, but no, we're done. Okay? And I feel like it's

causing more harm than good right now. Okay?

I don't know who instructed all of these Dondero-controlled entities to hire lawyers. I don't know if Ellington and Leventon have been giving instructions to these entities. But we've got conflicts everywhere now. Okay? We've got -- and by the way, I'm just going to list them now. We have, of course, Bonds Ellis representing Dondero. We have Doug Draper, Heller Draper, now representing these trusts, Get Good Trust, Dugaboy Investment Trust. We have K&L Gates and now Munsch Hardt also representing the Advisors, NexPoint and the various CLO or other Funds. We have CLO Holdco represented by Kane Russell Coleman Logan. We have NexPoint Real Estate represented by Wick Phillips. Who have I left -- and, of course, the employees, Baker & McKenzie and Ms. Smith. We have Spencer Fane in there for other current or former employees. We have Loewinsohn Flegle in there for certain former or current employees.

I mean, the proliferation of lawyers. And again, I don't know if Mr. Ellington and Mr. Leventon have had a role in hiring counsel, wearing their hat for these other entities or not. Can anyone tell me? Maybe I'm worried about something I shouldn't be worried about.

MR. DONDERO: You're worried about something you shouldn't worry about, Your Honor.

THE COURT: Okay. So Ellington --

MR. MORRIS: Your Honor, I would just point to the evidence that's in the record, Your Honor. You have Mr. Dondero asking Mr. Ellington to show leadership in coordinating all of the lawyers you just mentioned. It's in the record.

THE COURT: Yes. I'm just going to, until otherwise ordered, no conversations between Dondero and Ellington and Leventon, and that's just going to be my ruling until further order. That's what I feel best about.

Now, let me ask you, knowing that I could only give you a half a day on the 28th of January, if we start the confirmation hearing on whatever the plan looks like on January 27th, I mean, do people want to go with that, --

MR. POMERANTZ: Your --

THE COURT: -- even knowing we might not finish that day, or no?

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. Maybe if we could start on the 26th, have the 26th, 27th, and then maybe half of the 28th. I would think two and a half days should be enough, notwithstanding the volume of objections, because I think you'll find that, while there may be some evidence, I think the majority of the objections are really legal in nature.

THE COURT: All right. Traci, are you out there in video-land?

THE CLERK: Yes, I'm here.

THE COURT: Okay. Have I overcommitted the 26th? If we start the 26th at 9:30 in the morning, can we do that? Or --

MR. BONDS: Your Honor?

THE CLERK: That'd be fine.

THE COURT: Okay.

THE CLERK: Just remember that you have an appointment at lunchtime that day at noon on the 26th.

THE COURT: Okay. I --

THE CLERK: You don't have any court hearings.

THE COURT: Okay.

MR. BONDS: Your Honor, I'm sorry.

THE COURT: Go ahead.

MR. BONDS: Your Honor, I'm sorry. This is John Bonds. I have a hearing on the 26th that I can't miss.

THE COURT: Well, can someone else --

MR. POMERANTZ: Your Honor, we would request, right, that Mr. Lynn lead the confirmation hearing. There's a lot of lawyers. If we try to look at everyone's calendar, we're never going to be able --

THE COURT: Yes.

MR. POMERANTZ: -- to get something that's good for everyone.

THE COURT: Okay. Yes. Well, Mr. Lynn or Mr. Assink

can handle it, Mr. Bonds.

So we're going to start the 26th at 9:30. We'll go all day, except I have something at lunchtime, apparently. And then we'll go all day on the 27th, and then I can give you half a day on the 28th.

So you'll upload immediately a notice to that effect, Mr. Pomerantz.

MR. POMERANTZ: Yes, we would.

Your Honor, in terms of our documents in support of confirmation, we want to make it convenient with the Court. We know your Court would at least need one business day, so we would prefer to file, say, by 2:00 Central on the 24th, on a Sunday. Everyone will have it, and have one business day. I mean, the old order only had one business day in advance as well. So that's what we would propose for our confirmation documents to be filed.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. An important issue here is how the creditors have voted, and I have no idea how they have voted. The voting deadline has expired. So I have no problem with what Mr. Pomerantz suggests, but I do think that the Debtor should file its tabulation of votes sooner rather than later so we all know one of the central elements for the hearing that we'll have.

THE COURT: Okay.

MR. POMERANTZ: That's fair, Your Honor. We're

prepared to file the summary of voting and tabulation by the 15th of January.

THE COURT: Okay. Very good.

So, backing up, Mr. Pomerantz, you asked that I approve you filing any plan modifications by noon on Sunday, the 24th? Is that what you said?

MR. POMERANTZ: Yeah. So, there's a couple of things. There's our confirmation brief.

THE COURT: Uh-huh.

MR. POMERANTZ: There is our -- any evidence we would submit, although I suspect we are likely to provide live testimony, as opposed to a declaration. There was our summary of ballots, which we will now do on the 15th. And to the extent we have any modifications, we would provide them on Sunday by 12:00 noon Central time as well. Yes.

THE COURT: All right.

MR. RUKAVINA: Well, Your Honor, this is Davor Rukavina. Does that mean the witness and exhibit lists also will not be due until Sunday at noon? Because I would request that we have the normal period of time to exchange exhibits and witnesses.

MR. BONDS: Your Honor, I think that the normal time period is also important in this case.

THE COURT: Okay. I'm going to --

MR. POMERANTZ: Your Honor, we could -- if everyone

agrees on witness lists, we could do those by 5:00 p.m. Central on the 22nd.

THE COURT: Okay. Let's do that. Okay.

MR. POMERANTZ: But that -- but that needs to be for everybody.

THE COURT: Oh, it will be for everyone.

MR. RUKAVINA: Your Honor, no problem.

THE COURT: Okay. Let's --

MR. POMERANTZ: 5:00 p.m. Central Standard Time.

THE COURT: No more discussions. That'll be the ruling, okay? Everything is going to be due by 5:00 p.m. Central time on Friday, the 22nd. All right.

MR. POMERANTZ: Your Honor, is that our brief as well, or --

THE COURT: Yes.

MR. POMERANTZ: -- was that just the witness list?

THE COURT: Everything. Brief, witness list, and --

MR. POMERANTZ: Okay.

THE COURT: -- plan mods.

Let me look through my notes and see if there's anything else I want to say. You know, let me do some quick math here. I know there was one other thing I wanted to say that involves math. Okay. I think my math is right here. Okay. You know, I mentioned the proliferation of lawyers. And let me just say this. We had -- we've had about 90 people on the -- showing

up on the video screen today -- 89, 90, 91, 92. A few, a little over 90. Okay? So let's say 90. It's been up to 95 earlier. But let's pretend that 60 of those are lawyers billing by the hour. That's very conservative. Probably many more than 60. And let's assume conservatively that the average billing rate is $700 an hour. That's probably very low, right? We probably don't have many baby lawyers on the phone. So that's a very low average. So, 60 lawyers times $700 an hour, $42,000 an hour this hearing has cost. And then we've been going over seven hours. So let's say seven, conservatively, times $42,000. This hearing has cost $294,000 today. A preliminary injunction hearing. I mean, no one thinks that's chump change. I don't know, maybe some people do. This just seems like a ridiculous way to spend resources. No offense to all the wonderful lawyers, but this is just -- it's crazy-town, right? It is crazy-town. So I implore you, okay, how about I use that word, I implore you to have these good-faith discussions on a pot plan.

Please, Mr. Dondero, I mean, don't waste people's time. $160 million, I know that's not going to cut it. Okay? So it's going to have to be more meaningful. I just know that in my gut.

But having said that, I mean, I honestly mean I think a pot plan -- I think you getting your baby back is the best thing for everyone. Okay? I think it's the best thing for

everyone. So I want you all to --

MR. DONDERO: Judge, I -- Judge, I just need to interject for a second, because no one follows the big picture. We filed for bankruptcy with $450 million of assets. $360 million of third-party net assets, $90 million of affiliated notes. The third-party assets are down to $130 million and falling fast.

MR. POMERANTZ: Your Honor, I hate to interrupt Mr. Dondero, but that is not the purpose of this hearing.

THE COURT: Well, --

MR. POMERANTZ: Mr. Dondero's statement of the assets and value is just not something that the Debtors would agree and support. I'm sure it's not something the creditors -- I think we understand what Your Honor is saying. I think the Committee understands. And Your Honor knows that the Debtor and the Committee are close to the asset values. And Mr. Dondero should be making his argument to the Debtor and the Committee, not Your Honor, in this open forum.

THE COURT: Okay.

MR. POMERANTZ: It's just not appropriate.

THE COURT: And I understand where you're both coming from. And he's saying that because I made the comment I made about $160 million not being enough.

I've seen the evidence. I've heard the evidence at prior hearings, Mr. Dondero. We've had a lot of hearings. And I

remember writing that down. Wow, why did that happen? Seeing the dissipation of value. I couldn't remember the exact numbers, but I thought it was like $500 million something and then $300 million or whatever. And I remember Multi-Strat, that being sold, and blah, blah, blah, blah.

But having said that, there are a lot of causes of action that have been hinted at by the Creditors' Committee and others. So, causes of action is one of the things they are looking at when they start thinking about what's appropriate value.

So I just, I get where everyone is coming from. I get where everyone is coming from. But, again, let's take one more stab at this, please. Okay?

MR. POMERANTZ: Yeah. And Your Honor, my last comment. We're commercial people. The creditors are commercial people. I think we've done a tremendous job in being able to resolve most every one of the significant claims. I think the Court should trust the process. Mr. Dondero should trust the process.

And again, if there's a commercial deal to be worked out, I don't think there's anyone more than of course the Debtor and the people on the Committee, who have been litigating in many cases with Mr. Dondero and Highland for ten years, I don't think it's anyone's desire. So if there's a reasonable, rational proposal that the creditors can get behind and want

to engage, then there'll be a discussion. If they don't believe it's a reasonable, rational proposal, they won't.

THE COURT: Yes. All right. Well, I do feel very good about what I've heard about the UBS issues being worked out. I mean, we have come a long way in 15 months, even though it's frustrating to me and others. But, again, I know you all are going to do what you need to do. And I'll look for the form of order. I'm going to see you all, Mr. Dondero, including you, next Wednesday. And if there's nothing else, we stand adjourned.

MS. SMITH: Your Honor, I'd like to review the form of order as it regards my clients before it's submitted.

THE COURT: Okay.

MS. SMITH: If I could have a courtesy copy, please.

THE COURT: Yes. Well, yes. I'm not going to require 90 lawyers to get the order, but I will ask Mr. Pomerantz, Mr. Morris, make sure Ms. Smith gets it and obviously Mr. Dondero's counsel gets it. And I probably won't get it until Monday, it sounds like, but --

MR. POMERANTZ: That's likely.

THE COURT: But I'll be on the lookout for it. Okay. Thank you. We stand adjourned.

MS. SMITH: Thank you, Your Honor.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

MR. BONDS: Thank you, Your Honor.

(Proceedings concluded at 4:09 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 **01/11/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

INDEX

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, January 26, 2021
	9:30 a.m. Docket
Debtor.	
	MOTION FOR ENTRY OF ORDER AUTHORIZING DEBTOR TO IMPLEMENT KEY EMPLOYEE PLAN [1777]
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 21-3000-sjg**
Plaintiff,	
v.	PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST CERTAIN ENTITIES OWNED AND/OR CONTROLLED BY MR. JAMES DONDERO [5]
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.	
Defendants.	

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

Dondero Ex. 14

APPEARANCES, cont'd.:

For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
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 Certain Defendants:	Davor Rukavina Julian Vasek MUNSCH, HARDT, KOPF & HARR 500 N. Akard Street, Suite 3800 Dallas, TX 75201-6659 (214) 855-7587
For Certain Defendants:	A. Lee Hogewood, III Emily Mather K&L GATES, LLP 4350 Lassiter at North Hills Avenue, Suite 300 Raleigh, NC 27609 (919) 743-7306
For James D. Dondero:	John T. Wilson BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
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
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 - JANUARY 26, 2021 - 9:40 A.M.

THE COURT: All right. We have Highland settings this morning: a Motion for Approval of a KERP, which I didn't see objections to, and then a Preliminary Injunction hearing. Let me get appearances from the parties who have filed pleadings.

For the Debtor team, I see Mr. Morris. Who do we have appearing?

MR. POMERANTZ: Good morning, Your Honor. It's Jeff Pomerantz and John Morris appearing on behalf of the Debtor. I will handle the KERP motion, which we'll propose goes first and quickly, and then Mr. Morris will handle the adversary proceeding.

THE COURT: All right. Very good.

All right. Let me get appearances from the Defendants in the preliminary injunction matter. Do we have Mr. Kane or someone for CLO Holdco?

MR. KANE: Yes, Your Honor. John Kane for CLO Holdco, Ltd.

THE COURT: All right. What about for the Funds and Advisors? I guess we have a couple of law firms involved. Who do we have appearing for the K&L Gates firm?

MR. HOGEWOOD: Good morning, Your Honor. This is Lee Hogewood with K&L Gates, and also with our firm appearing today is Emily Mather.

THE COURT: Okay. I didn't get Emily's last name. Could you repeat that?

MR. HOGEWOOD: I'm sorry, Your Honor. Emily Mather, M-A-T-H-E-R.

THE COURT: Thank you.

All right. For the Munsch Hardt team, do we have Mr. Rukavina or someone else appearing?

MR. RUKAVINA: Your Honor, good morning. This is Davor Rukavina. I represent all of the Defendants in the adversary except CLO Holdco.

Pursuant to the Court's instructions, Mr. Dondero is also present here in my conference room, so he is here. He is not on the camera, but he is here.

THE COURT: Okay. All right. And does Mr. Dondero have counsel, his individual counsel appearing today?

MR. WILSON: Your Honor, John Wilson for Jim Dondero.

THE COURT: Okay. Thank you. Do we have Creditors' Committee lawyers on the phone today?

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

THE COURT: All right. Thank you.

All right. Well, obviously, if any other lawyer is dying to chime in at some point today, I will consider letting that happen. But, again, I think we've got the parties who have

filed pleadings having appeared at this point. So, let's turn to the KERP motion. Mr. Pomerantz?

MR. POMERANTZ: Yes, Your Honor. Good morning again. On January 19th, the Debtor filed its motion for approval of a Key Employee Retention Program which would substitute out its annual bonus plan.

We have not received any opposition to the motion, although the United States Trustee did ask some questions which we are prepared to address in connection with the proposed proffer of Mr. Seery's testimony. I'm happy to make a full presentation of the motion to Your Honor, if you would like, or I could just present Mr. Seery's proffer, which I should -- which I believe will establish the factual predicate and the evidence to support the motion.

THE COURT: All right. Let's just go straight to the proffer, please.

MR. POMERANTZ: Okay. Thank you, Your Honor.

PROFFER OF TESTIMONY OF JAMES P. SEERY

MR. POMERANTZ: Mr. Seery is on the video today, and if he was called to testify he would testify that his name is James P. Seery, Jr. and that he is the chief executive officer and chief restructuring officer of Highland Capital Management.

He would also testify that he was one of the independent directors appointed to the Court on January 9th, 2020.

Because of his role with the Debtor, he is familiar with the company's day-to-day operations, including its -- the company's employee and wage benefit and bonus plans relating to the employees.

He would testify that he has been involved in the negotiation and drafting of the company's plan of reorganization, and is familiar with the expected operation of the Claimant Trust and Reorganized Debtor post-confirmation in connection with the plan.

He would testify that the plan generally provides for the monetization of the company's assets for the benefit of creditors and stakeholders, and he would testify that, as part of the plan process, he worked closely with DSI, the company's financial advisor, to assess both the costs of the Debtor's current employee base and the projected cost of operations in connection with the Reorganized Debtor and Claimant Trust following the effective date.

He would testify that, to ensure the continued smooth operation of the company in connection with the continuation and consummation of the plan for the benefit of all stakeholders, that he worked with DSI to determine the appropriate staffing needs necessary for the company's remaining operations.

He would testify that he analyzed the current employees to determine which, if any, would need to be continued to be

retained by the Debtor and operate during the Reorganized Debtor and Claimant Trust period following the effective date of the plan.

He would testify as part of that analysis he reviewed the roles and functions of the non-insider employees with respect to the services that they needed, and he reviewed the wages, benefits, and bonuses for those remaining non-insider employees necessary for those functions.

He would testify, that based upon his review, the company determined that it was in the best interests of the estate to terminate the existing annual bonus plan, as it was no longer necessary to effectively incentivize the remaining non-insider employees who would be terminated prior to being entitled to any further payments under the annual bonus plan.

He would testify that, instead, the company developed a new retention plan that was designed to incentivize the non-insider employees to remain with the company for as long as they are needed to assist in the effectuation of the plan.

He would testify that Mr. Waterhouse and Surgent, arguably two insiders of the Debtor, are not eligible for the retention plan, and that's not because there is any concern regarding their loyalty, but the Debtor is looking at ways to appropriately incentivize and compensate those people as appropriate in the future.

He would testify that there are a few persons on the list

of people who are part of the retention plan with a title that includes director or manager; however, he would testify that none of those individuals are corporate officers or directors of the Debtors -- the Debtor, and that the titles are for convenience only. He would testify that the individuals who are employed in these roles do not have any authority whatsoever to make any decisions on behalf of the Debtor.

He would testify that in connection with the new retention plan, the non-insider employees may be offered the opportunity to enter into a termination agreement with the company that will provide specified benefits and payments in return for the non-insider employee remaining as an employee in good standing with the company through the separation date.

He would testify that a key component of the retention plan is that non-insider employees will be entitled to the specific bonus payments provided that they do not voluntarily terminate their employment with the Debtor prior to the separation date and are not terminated for cause.

He would testify that that is in contrast to the existing or the prior annual bonus plan, which provided that non-insider employees would not receive their bonus payments if they were not employed by the Debtor on the vesting date for any reason except on account of disability, including termination without cause.

Mr. Seery would further testify that the retention plan is

being offered to approximately 53 employees, and the projected aggregate amount of payments under the retention plan is approximately $1,481,000, which is $32,000 approximately less than the amount that would have been paid to such employees under the annual bonus plan.

He would testify that the retention plan includes 20 employees who are not entitled to benefits under the annual bonus plan. Fourteen employees are entitled to receive more under the retention plan than they would have received under the annual bonus plan.

With respect to the 20 employees I've previously mentioned who are not otherwise entitled to receive anything under the annual bonus plan, the vast majority of those -- 18 -- will be entitled to payments of $2,500 each, and the other two entitled to payments of $10,000 and $7,500, respectively.

Mr. Seery would testify that he believes that these additional payments are reasonable in light of the current status of the company and the value to be added to the estate through the retention of these employees, and that this plan is more accurately and narrowly-tailored to achieve the company's reorganization goals.

On this basis, Your Honor, Mr. Seery would testify that he presented the proposed retention plan to the independent directors and they agreed with Mr. Seery's assessment that entry into the retention plan was in the best interests of the

estate and its creditors.

He would also testify that he had negotiations with the Creditors' Committee and its advisors regarding the retention plan and that the Committee is supportive of the retention plan.

And that would conclude my proffer of testimony from Mr. Seery, Your Honor.

THE COURT: All right. Mr. Seery, if you could say "Testing, one, two" so we can catch your audio and video, please?

MR. SEERY: Testing, one, two, Your Honor.

THE COURT: All right. There you are. Please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Is there anyone who has questions at this time for Mr. Seery?

(No response.0

THE COURT: All right. Well, I'll just double-check with the Committee. It's been represented that you all are in support of this. Mr. Clemente, if you could confirm that on the record?

MR. CLEMENTE: That's correct, Your Honor. The Committee has no objection to the motion, so Mr. Pomerantz's statements are accurate.

THE COURT: All right. Anyone else?

MS. LAMBERT: This is Lisa Lambert for the United States Trustee. The U.S. Trustee has reviewed the actual data about the comparatives, and the U.S. Trustee, based on the stipulations, has no objection.

THE COURT: All right. Thank you. Anyone else?

All right. Well, the Court will approve this motion. First, while the notice was expedited, the Court finds that it was sufficient under the circumstances. We are many months into the case, it's been vetted by the Committee, and the Court is satisfied with the level of notice here.

The Court finds that this is a KERP that is justified by all the facts and circumstance of this case, to use the wording of Section 503(c)(3) of the Bankruptcy Code. There also appears to be a very sound business purpose justifying the proposed KERP. It appears to be reasonable in all ways, and fair under the circumstances, so I do approve it.

All right. So if you all will get the order uploaded electronically, I will promise to sign it promptly.

MR. POMERANTZ: We will do so, Your Honor. Thank you.

THE COURT: All right. So, the preliminary injunction. Mr. Morris, I heard you were going to be taking the lead on that, so go ahead.

MR. MORRIS: Indeed. Good morning, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

THE COURT: Good morning.

MR. MORRIS: A few items before I give what I hope will be an informative opening statement. I trust that Your Honor has not had the opportunity, because it was just filed a moment ago, to see that the Debtor filed on the docket notice of a settlement with CLO Holdco, Ltd., one of the Defendants here today.

THE COURT: I have not seen that. Okay.

MR. MORRIS: Right. So you'll find that at Docket 1838.

THE COURT: Okay.

MR. MORRIS: It really is a very simple settlement, Your Honor. In exchange for the withdrawal of CLO Holdco's objection to the Debtor's plan of reorganization, the Debtor is dismissing CLO Holdco from this adversary proceeding with prejudice. There are, you know, some other bells and whistles there, the most important of which to the Debtor is simply that, under the CLO management agreements, most of them but not all of them require that a level of cause be established before the contracts can be terminated, and CLO Holdco has agreed that, before it seeks to terminate a contract for cause, there will be a gating provision or a gatekeeping provision that requires them to come to this Court to simply establish whether or not there is a colorable claim -- not for a determination on the merits, but simply to protect the

Debtor from frivolous lawsuits.

So that's really the sum and substance of it. Mr. Kane is on the line now, and if I've either inaccurately or incompletely characterized the settlement, I'm sure he'll take the opportunity to supplement the record. But we don't see any need, really, to go through a full 9019 motion here. There's no releases. There's no exchange of money. It's the withdrawal of a plan objection in consideration for the dismissal of an injunctive proceeding.

So we did want to alert you to that. And as a result, there was one witness that we intended to call today, Grant Scott. Mr. Scott is the director of CLO Holdco. And with the resolution of the issues between the Debtor and CLO Holdco, we have no intention of calling Mr. Scott today. But I'd like to give Mr. Kane an opportunity to be heard just in case he's got anything to add.

THE COURT: All right. Mr. Kane, can you confirm? Do you have anything to change about what you heard?

MR. KANE: Your Honor, I do not. The settlement agreement speaks for itself. We did reach an agreement with Debtor's counsel and the Debtor yesterday evening, fairly late in the evening. Mr. Morris's synopsis of the proposed settlement is accurate. The Debtor has agreed to dismiss CLO Holdco from the preliminary injunction adversary proceeding with prejudice.

THE COURT: All right. Well, thank you. I've pulled it up on my screen. It's very short and to the point. And I agree with the comment of Mr. Morris that I don't think a formal 9019 motion is required here, given no consideration is going back and forth, or releases. It's just exactly as you described orally. So, I appreciate that. It simplifies a little bit what we have set today. And we will accept this settlement as being in place as we roll forward. All right? Thank you.

MR. MORRIS: Thank you, Your Honor.

So, before I get to the substance of the argument, I would like to take care of some housekeeping items relative to today's proceedings.

THE COURT: Okay.

MR. MORRIS: You know, this has been a bit of a challenge for me personally, and it's going to be a little bit of a challenge today for Ms. Canty, my assistant, in part because it's almost like Groundhog's Day. This is, I think, the third time that we're covering some of the same issues. We had covered them the first time on December 16th in connection with what I'll now just simply refer to as the Defendants, the Defendants' motion to try to limit the Debtor from trading the CLO assets. We heard a lot of what we're going to hear today again on January 8th in connection with the preliminary injunction motion against Mr. Dondero. And so

there's already a ton of evidence in the record. We do believe that we need to present our evidence today, but one of the challenges that we'll face, and I think we'll be able to do it efficiently, Your Honor, is there may just be some back and forth between various documents. But everything's gone pretty smoothly, and I'm optimistic we'll get through that part of it today.

So I want to deal with the exhibits themselves, Your Honor. As you may have seen, there have been a number of different filings relating to the Debtor's exhibits for this particular motion, and I just want to go through the exhibits and make sure that we're all on the same page here. I want to tell the Court exactly what happened and why and where we are today.

The Debtor timely filed its original witness and exhibit list on January 22nd. They filed that witness and exhibit list at Docket 39 in this Adversary Proceeding 21-3000. The exhibit list referenced Exhibits A through I'll just say AAAAA. It was a lot of exhibits, and somebody had the wise idea to convert them to numbers, but it wasn't me, so I can't take credit. But we're left with letters, and they go from A through AAAAA.

After filing that initial exhibit list, we realized that --

(Interruption.)

THE COURT: All right. Does someone have their device unmuted? Okay. It went away. Go ahead, Mr. Morris.

MR. MORRIS: Thank you. So, shortly after filing that initial exhibit list, we realized that we forgot to file among the exhibits AAAAA. So at Docket #40 in the adversary proceeding, the Court can find Debtor's Exhibit AAAAA.

And then we're going to -- I'm going to refer in a few minutes -- I'm going to use in a few minutes some demonstrative exhibits, and I'm going to use them again with Mr. Seery. And these exhibits concern trading in AVYA and SKY securities that you've heard about previously.

But I'm pointing that out now because I'm kind of old school, Your Honor, and I won't use a demonstrative exhibit if it doesn't have the evidence in the record. And what we realized, Your Honor, is we made two additional mistakes on Friday with all the papers that we filed. The backup for these demonstratives was mistakenly included on the exhibit list for the confirmation hearing as opposed to the preliminary injunction hearing. That was error number one. And error number two, we hadn't redacted the information to show only the SKY and AVYA.

And that's why, Your Honor, at Docket #48, you will find our amended exhibit list that includes what we have identified as Exhibits BBBBB as in boy through SSSSS as in Sam. And those exhibits, Your Honor, are the backup to the

demonstrative exhibits. I don't expect to use them at all, but I do believe strongly that one should not use a demonstrative exhibit unless the evidence is in the record to support it, and now it is.

So that's why, Your Honor, I do appreciate your court staff. I do appreciate Your Honor. I think you either had before you and you may have signed an order on redacting. This is what it was all about. It was just to make sure we had the proper evidence in the record, so I appreciate that.

At this time, Your Honor, I think, just because I'll be referring to it in the opening, the Debtor would move for the admission into evidence of Exhibits A through SSSSS.

THE COURT: All right. Is there any objection?

MR. RUKAVINA: Your Honor, there is. Your Honor, I object to UUUU. I'll object to VVVV as in Victor. I object to AAAAA. That's it, Your Honor.

I will note that there are several exhibits in here of relevance to CLO Holdco that may not be relevant to my clients, but those are my limited objections for now.

THE COURT: All right. Before we ask the nature of your objection, let me ask Mr. Morris: Shall we just --

MR. MORRIS: Yeah.

THE COURT: -- carve these out for now, and then if you want to offer them the old-fashioned way, we'll hear the objection then?

MR. MORRIS: Yes, although I can make it very clear that UUUU should not be in there precisely because it's demonstrative. We had talked that yesterday and I agreed; I just forgot that. UUUU should not be part of the record.

THE COURT: Okay. And so you'll just decide later do you want to offer VVVV and AAAAA the old-fashioned way?

MR. MORRIS: Correct.

THE COURT: All right. So, for the record, I am admitting by stipulation -- with three exceptions I'll note -- all of the exhibits of the Debtor that appear at Exhibits 39 and, well, and 48. And we're carving out of that admission UUUU, VVVV, and AAAAA, which actually appears at Exhibit -- Docket Entry 40. Those are not admitted at this time.

(Debtor's Exhibits A through SSSSS, exclusive of Exhibits UUUU, VVVV, and AAAAA, are received into evidence.)

THE COURT: All right. Go ahead, Mr. Morris.

MR. MORRIS: Yes.

MR. RUKAVINA: Well, Your Honor, while we're talking about housekeeping -- Mr. Morris, I apologize. Is there more housekeeping?

MR. MORRIS: I'd like to continue. I was going to describe the witnesses.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: So, Your Honor, the Debtor is going to call three witnesses today. The first witness will be Mr.

Dondero, the second will be Jason Post, and then the third will be Mr. Seery.

Obviously, Mr. Dondero and Mr. Seery are very familiar to the Court and they will cover much but not all of the same ground that you've heard previously.

Mr. Post, I believe, is a new witness appearing in this court for the first time. I understand that he is the chief compliance officer of each of the Debtors [sic]. He had worked at Highland Capital Management, the Debtor, for more than a decade, I believe, but moved over to NexPoint to work with Mr. Dondero shortly after Mr. Dondero resigned from Highland Capital on or about October 10th last year.

So those are the three witnesses that we plan to present today, and I'd like to describe briefly kind of what we think the evidence will show.

The theme from our perspective here, Your Honor, is that this is a case that is about power and not rights. The Debtor brings this motion for preliminary injunction in order to protect itself from the interference of Mr. Dondero and the Defendants, entities that there will be no dispute he owns and controls.

You may have read in the papers, and I suspect you will hear today from the Defendants, the clarion call for contractual rights and the need for this Court to protect their contractual rights. This is a red herring, Your Honor.

There are no contractual rights at issue here. What Mr. Dondero and the Defendants really want is to maintain control, or at least to deny Mr. Seery from exercising the Debtor's valuable contractual rights. If there are any contractual rights at issue here, it is the Debtor's. The Debtor is the party to the CLO management agreements, and it's those very rights that are being infringed upon.

This was supposed to have been resolved 53 or 54 weeks ago now, Your Honor, when Mr. Dondero agreed and this Court ordered that Mr. Dondero could not use related entities to terminate any of the Debtor's agreements. There is no dispute that each of the Defendants is a related entity for purposes of the January 9th order, since Mr. Dondero and Mr. Norris have already testified that the Defendants are owned and/or controlled by Mr. Dondero.

Notwithstanding the plain language of the January 9th order, which Mr. Dondero not only agreed to, but it may be one of the very few orders in this case that he hasn't appealed, notwithstanding the plain language, Your Honor, he persists, and that is why we are here.

How do we know that this is about power and not rights? How do we know that everything that's going to be described for you, what the evidence is going to show that this is about power and not rights, is very simple. Mr. Dondero and Mr. Post will testify -- I'm just going to give four, five, six

examples here -- are going to testify that Mr. Seery's AVYA trades were not in the Funds' best interests. It's an irrelevant point, Your Honor. There is no contractual right that gives them the ability to terminate because they don't like trades that are being made. They can sell. If they don't like it, they can sell. That's what's really funny about this.

But what's -- what makes it even more clear that this is about power and not rights is the evidence is going to show that Mr. Dondero sold AVYA shares throughout 2020. He sold those shares right up until the day he resigned. And yet six days after resigning, NexPoint sends a letter saying, Don't sell any assets.

Ms. Canty, can we put up Exhibit number -- Demonstrative Exhibit 1, please?

Okay, Your Honor. We have redacted this to shield from public disclosure the name of each fund that's trading, but the backup, as I alluded to earlier, in Exhibits BBBBB through SSSSS, some portion of those documents, that's where these demonstrative figures come from.

And as you can see, beginning on January 29, 2000, continuing through the bottom of the page, October 9th, 2020, when Mr. Dondero left Highland Capital, he traded millions and millions and millions of dollars in AVYA stock.

Can we go to Demonstrative Exhibit #2, please?

This chart is really -- no, I apologize if I -- the other one. The AVYA trading activity chart. Yeah.

This one is really interesting, Your Honor, because it shows the trading throughout the year of AVYA stock, and you can see the brown bars there represent Mr. Dondero's trades. And you can see just how many trades there are. There are over a million shares, I think, if you added it up. They're represented by the brown bars. You can see him selling AVYA stock throughout the period, sometimes at a price really near its bottom.

And then Mr. Seery tries and actually does sell some stock toward the end of the year. That's the green bars on the right. A very, very tiny amount compared to Mr. Dondero. And he sells it at a substantially greater price than Mr. Dondero sold the AVYA stock. And yet they're here telling you, Your Honor, that somehow Mr. Seery is mismanaging the CLOs and they disagree with what he's doing and he's not acting in the best interests of the investors. That's what they want -- but this is what the evidence shows, Your Honor.

With respect to SKY, if we could go to the next slide, please.

So this is SKY. Now, Mr. Dondero did not trade any SKY securities, but Mr. Seery did. And this was another security -- and we'll get to the evidence in a moment -- that Mr. Dondero interfered with and tried to stop. So Mr. Seery

succeeded sometimes and he was stopped sometimes, but the point is, Your Honor, look at the price that Mr. Seery sold.

And remember, you heard this before and you're going to hear it again. Nobody from the Defendants ever asked Mr. Seery, Why do you want to trade this? Not that they even had to. Not that Mr. Seery needs to defend himself, frankly. He's got the authority under the management contracts to act in the way that he thinks is in the best interest. But look at this chart. He made these sales, Your Honor, at more than twice the price of the bottom.

How can they have any credibility? How can Mr. Dondero and Mr. Post come into this courtroom and assert that Mr. Seery is doing anything other than a fabulous job? He is selling at the top of the market. Because they think that some high -- in the future, it's going to go higher? It's prudent, Your Honor.

Mr. Seery is going to tell you the work that he did. He is going to give you the rationale for his decisions. And the only conclusion that I hope and believe the Court will be able to reach is that these were not only rational decisions but they were prudent, taking some money off the table when the stock was near its high.

That's how we know, this is more evidence how we know this is about power. It's not about rights. It's not about justice. It's not about anything having to do with anything

other than Mr. Dondero wanting to maintain control.

How else do we know? What other evidence is there that this is about power and not rights? Again, the timing. The calendar here is going to be very, very important. The first demand from NexPoint from the Defendants that Mr. Seery stop trading came on October 16th. It was less than a week after Mr. Dondero -- like, where does this come from? There's no right to demand stopping of trading. You don't get to do it. And they're going to minimize it. They're going to spend the whole day, Your Honor, either -- either focusing on the law or trying to minimize. And they'll say, well, it was just a request, Your Honor. And if it was a third-party request, I bet Mr. Seery -- Mr. Seery is going to tell you, if it was a third party, he wouldn't care. But when you put all of this together, it is oppressive. It is an exertion -- it's an attempt at exertion of control. That's how it's perceived and that's actually what happened.

Do you need more evidence? Again, they'll talk about termination for cause and how they have the right and the Court -- you, Your Honor, don't have the power to infringe upon their contractual rights. But there will be no evidence. Absolutely none. Mr. Post is going to tell you, in fact, that he has no evidence of any breach, of any default, of any reason whatsoever that cause might exist for the termination of these contracts. That's how you know this is about power

and not rights.

Last point on the issue of power versus rights: Who were the counterparties to the CLO agreements? Did the CLO Issuers -- where are they? They're not here. They're not here to tell the Court that Mr. Seery is breaching his duty. They're not here to tell the Court that the Debtor is in default. In fact, what Mr. Seery is going to tell you, and it won't be rebutted, is that the CLO Issuers are close to finalizing a deal that will permit the Debtor to assume the CLO management contracts.

Mr. Post or Mr. Dondero might get up on the stand today and say, oh, because people have left the firm, that somehow they don't have the ability to service the contracts anymore. You know who doesn't believe that? The contractual counterparty, the Issuers. It's about power, Your Honor. It's not about rights.

There is substantial evidence that warrants the imposition of a preliminary injunction, substantial evidence, much of which you've heard already.

The October and November letters demanding or requesting that the Debtor halt trades. There's no right to that.

Mr. Dondero's interference with the support of Joe Sowin, the Advisors' trader, around Thanksgiving, when they actively moved in. And it's in the emails. It's in the record. We'll put in the record again.

And then he made the threat to Thomas Surgent -- Mr. Dondero made the threat to Thomas Surgent about potential personal liability.

The ridiculous -- remember the ridiculous motion that was heard on December 16th, a motion so devoid of factual or legal basis that the Court granted the Debtor a directed verdict and dismissed the motion as frivolous? Notably, neither Mr. Dondero nor Mr. Post testified at that hearing. Yet, within a week, Your Honor -- the hearing was on a Wednesday. The hearing was on Wednesday, December 16th. The Court entered the order on Friday, December 18th. On Monday, December 21st, the next business day, Mr. Dondero and Mr. Post and the lawyers for the Defendants held conference calls to figure out what to do next.

And the very next day, the evidence is going to show -- it's already in the record -- Mr. Dondero again actively stopped Mr. Seery's trades from being effectuated. They sent their first letter. This is less than a week after that hearing, Your Honor. They sent another letter asking the Debtor -- again, they requested -- minimize -- this is what you're going to hear: Well, we just sent a letter requesting no more trading.

What happened the next day, December 23rd? They send another letter and they say, We're thinking about terminating the contracts. Now we think we're going to terminate the

contracts. And we just want to let you know we're thinking about terminating the contracts.

And we call them -- and Mr. Seery is going to testify to this -- we say, What are you doing? Every time we just said, Please withdraw your letter. There's no basis for doing this. Leave us alone and let us do our job. They wouldn't -- they refused to withdraw the letter.

And finally -- again, Mr. Seery will testify to this -- we told them, If you think you really have a basis for terminating the contract, make your motion to lift the stay. And if you don't, the Debtor will file the motion that brings us here today.

And that's how we got here, because they continued to interfere with the trading. They continued to send these specious letters that are implicit threats. Mr. Seery is going to tell you that every one of these, he -- is an implicit threat. We asked them, Just withdraw the letters and stop it. We asked them to make their own motion if you think so strongly of it. They wouldn't do that, either. They just want it hanging out there. They just want it all hanging out there over Mr. Seery's head so that he knows somebody's -- somebody's watching and somebody's planning, you know, to take action.

It's not right, Your Honor. They have no right to any of this. There's nothing in the contract that allows them to

make even a good-faith -- to make any claim that they have cause to terminate the contract. They have no right under any circumstances to stop Mr. Seery from trading.

What they are going to tell you is there's no agreement between the Advisors and the Debtor that requires the Advisors to execute the trades. And they're right about that. They're actually right about that. But here's the thing, Your Honor. What Mr. Seery is going to tell you is that Advisors has the trading desk. For more than a decade, they executed the trades. Through the entirety of this bankruptcy case, until Mr. Dondero left Highland, they executed the trades. Even after Mr. Dondero left Highland in October, they continued to execute the trades. And on December 22nd, they fold their hands and they say, Nope, I don't care about the course of dealing, I don't care what impact it has, you can't make me do it. So Mr. Seery has tried end-arounds, and that'll be in the record, too, and that's when the threats to Surgent come. That's when the threat to Surgent come, when we try to do the workaround. Cannot do it.

This is just not right, Your Honor. It's just not right. There's order -- there's the January 9th order. There was the TRO that was in effect that we're going to hear about again, because that TRO not only applied to Mr. Dondero, it prevented him from conspiring with or even encouraging a related entity from engaging in prohibited conduct. And that prohibited

conduct, as Your Honor knows, because it's your order, is plain and as unambiguous as can possibly be: Don't interfere with the Debtor's business. It's all we're asking for. It's the only reason we're here today.

Interestingly, Your Honor, probably the best piece of evidence that I'll put in front of you today are going to be the words out of Mr. Post's mouth, because basically what he's going to tell you is that, as chief compliance officer, he has never once in the history of his employment told Mr. Dondero to stop. In fact, what he's going to tell you is that he defers to the investment professionals, and that but for the TRO that is consensually in place today, it would depend on the facts and circumstances as to whether or not he actually does anything as chief compliance officer to stop this conduct. Depends on the -- maybe he can explain to Your Honor what facts and circumstances he thinks, as chief compliance officer, would allow the Advisors to interfere with the Debtor's business. It'll be interesting to hear him answer that question.

That's all I have, Your Honor. I look forward to presenting the evidence today. I'd like this done once and for all. It's time to move on. And the Debtor -- the Debtor is in bankruptcy. Your Honor, I think, has every power, every right, and frankly, you know -- I feel very strongly about this, obviously, Your Honor -- the Debtor needs the breathing

space and to be left alone so it can do its job. And we'll respectfully request at the end of this that the Court enter an order allowing it to do so.

Thank you, Your Honor.

THE COURT: All right. We were hearing some distortion there, I'm not sure where it was coming from, but we'll try to keep it reined in.

Mr. Rukavina, your opening statement.

MR. RUKAVINA: Your Honor, thank you. Can the Court hear me?

THE COURT: Yes.

OPENING STATEMENT ON BEHALF OF CERTAIN DEFENDANTS

MR. RUKAVINA: Your Honor, I think it's important first to note a few obvious things. One, what we're talking about today is enjoining future rights, future rights under a contract. Hearing Mr. Morris's opening, it sounds like we're trying a breach of contract case. There is no declaratory relief sought for whether there is grounds for a breach of contract case. And prior to assumption and prior to confirmation, the automatic stay applies.

So let me be clear that what they're asking the Court to do today is to excise from these contracts our rights in the future, effectively for all time, as I'll explain.

The second thing that merits real consideration is that it is the Funds, Your Honor, not the Advisors, it is the Funds

that have the right to remove the Debtor as manager.

Those Funds, as you will hear, have independent boards. Mr. Dondero doesn't own those Funds. He's not on those boards. He doesn't control them.

When Mr. Morris talks about Mr. Norris's prior testimony, that testimony was limited to the Advisors. And yes, Mr. Dondero does own the Advisors, and Mr. Dondero, while I won't say controls the Advisors, certainly has a lot of input. That is not the case for the Funds, which are the ones with the contractual powers here to remove the Debtor.

You will hear that those -- that that board or those boards meet frequently, they have independent counsel, and they take separate actions, including very recently where they did not do something that was advised and acted independently.

And the third thing that makes this case different and that all of us should bear in mind is that we're talking today about other people's money. There's more than one billion dollars of investment funds, retirement funds, pension funds, firefighter funds, school funds, wealthy individuals, having nothing in the world to do with Mr. Dondero or anyone in this case.

So what we're talking about here today, Your Honor, is that if my retirement manager files bankruptcy, that I for all time would be effectively enjoined from removing him, no matter what he may do in the future, just because he needs

that revenue.

That is an absolutely inappropriate use of a preliminary injunction. It is the modification of a contract that the Debtor seeks to assume, and there is going to be no evidence on the underlying elements that the Court must consider.

I say that, Your Honor, because I'm new to -- I'm late to this case but I have studied in detail what Your Honor did in the *Acis* case. And I think that we have to qualitatively differentiate today from *Acis*. In *Acis*, there were allegations of fraudulent transfer. When Your Honor enjoined future actions, I believe in part it was because the legitimate owner of those rights might not have been having those rights.

So that was a very important difference. Here, there's no question that we have more than billion dollars of other people's funds at issue.

Also in *Acis*, as confirmed by the District Court, there was the exercise of an optional redemption right, which could have very well been used as a weapon to strip the manager of its rights. That's not the case here today. We are talking about removing the Debtor in the future -- not today, not prior to assumption, in the future -- for such things as if the Debtor commits fraud, if Mr. Seery is indicted for felonies, if the Debtor absconds with our funds. We are talking about potential hypothetical actions in the future

that are not even ripe based on the Debtor's potential wrongful actions, not based anything on our motivations or our intentions.

So this is a different case than Your Honor has heard so far in these cases. And what it boils down to, Your Honor, is will the Court give judicial immunity to the post-assumption, post-confirmation Debtor over the next two or three years as it manages and liquidates more than a billion dollars of other people's funds? It is their money at issue.

So, in order to do this, the Debtor first has to tell Your Honor that it has a likelihood of merits on the success [sic] of some claim. The Debtor cannot just come to you -- because the Debtor knows Your Honor's opinion on 105(a) and the Supreme Court law -- and the Debtor cannot just say, Judge, please give us an injunction because it's convenient or because we don't want to comply with our obligations. So they concoct a tortious interference claim. They argue that there is an automatic stay violation, which, as Your Honor knows, all of us bankruptcy lawyers take most seriously. And they argue that, well, whatever Mr. Dondero has been enjoined from doing, somehow we *a priori* are also enjoined. Basically, an alter ego with no facts, law, trial, or due process.

On the tortious interference, Your Honor will hear absolute evidence that cannot be refuted that all that we did, all that we did was we refused, our employees refused to make

a ministerial entry into a computer program of two trades that Mr. Seery authorized. Those trades closed exactly as Mr. Seery wanted. Those trades closed, were executed, before Mr. Seery asked our employees to do his bidding. And the reason why our employees were instructed not to do what Mr. Seery wanted was because our chief compliance officer looked at it, those employees looked at it, and they all said, What is this? Our internal protocols were not followed. We don't know anything about these trades. We have fiduciary duties, we have SEC obligations, and Mr. Seery has his own employees whom he can instruct to enter these two trades into the computer and our employees aren't going to do it. It's as simple as that.

Mr. Dondero did not command that decision. Mr. Dondero did not instruct that decision.

Our employees not doing what Mr. Seery requested of them is not tortious interference. It is not interference as a matter of law. There was no breach of contract as a result.

So the two elements -- two of the elements required for tortious interference, there will be zero evidence on. But in the bigger picture, what they're talking about again is restraining our rights in the future. And whether -- whether we are party to these contracts or a third-party beneficiary, it doesn't matter, because we are not a stranger to these contracts. These contracts expressly give us rights. And a

party exercising their right under a contract, it could be breaching that contract, but it cannot be tortious interference as a matter of law.

And if Your Honor is concerned about us tortiously interfering in the future, then the Court should enjoin us from tortious interference in the future, not excise from the contract the remedies that the Debtor must accept if it wants to assume these contracts.

Moving to the automatic stay issue, the sole and exclusive argument for why we violated the stay is because our counsel, a seasoned, gentlemanly bankruptcy lawyer of many years' experience, sent two letters to seasoned veteran bankruptcy lawyers for the Debtor. Communications. Communications amongst counsel.

The first, the December 22nd letter, is a request: Okay, we lost in front of Judge Jernigan, Judge Jernigan called our motion frivolous, we get that, but we ask you to please stop trading until the plan is confirmed. A request which the Debtor ignored. Or that's not true, didn't ignore: refused to comply with.

The second letter, a day later, after various communications, was: Okay, we are going to initiate the process of terminating you as the servicer.

Mr. Dondero had nothing in the world to do with these letters. Mr. Dondero did not direct these letters. This was

professional advice from outside counsel and the independent boards of the Advisors believing that their fiduciary duty compelled that.

And guess what, that letter even said: subject to the automatic stay. You heard from Mr. Morris that they basically said, File your stay motion.

Our follow-up letter clarified anything that we might do is subject to the automatic stay. We never said we're going to act in a way that the stay doesn't permit. We said we're going to come to this Court first.

But even all that, all those communications, while it may be interesting, are irrelevant, because we never took any action. You will hear that we never communicated with the CLOs, the Trustees, or the Issuers, anything like we went over with the Debtor, anything like, Please start the process of removing the Debtor. We have done nothing of the sort, we will do nothing of the sort, precisely because of the automatic stay.

So I equate this, Your Honor, to your average home lender whose lawyer sends a letter to the borrower saying, You don't have insurance; we're going to start the process of foreclosure. You're past due on your post-petition adequate protection payments; we're going to start the foreclosure process; we're going to go seek a list of stay. That is not actionable. It is not a stay violation. Those are

communications, not actions. And that is precisely what seasoned professional counsel should be doing.

And now, Your Honor, we move to the Mr. Dondero issue. The argument is, well, on January the 9th, Mr. Dondero, apparently for all time, in perpetuity, agreed that he will not cause the related entities to terminate these agreements. And then the argument is, well, the Court entered a TRO against Mr. Dondero and the Court entered a preliminary injunction against Mr. Dondero. Okay?

I don't see where the problem is. Mr. Dondero is prohibited from causing us to terminate these agreements. There are many ways, with independent boards, that Mr. Dondero has nothing to do with that. And he will have nothing to do with that in the future. So if the concern is enjoining us because of an injunction against Mr. Dondero, enjoin Mr. Dondero. Just like if the concern is that we're going to tortiously interfere, you enjoin us from tortious interference. Or if we're going to violate the stay, enjoin us from violating the stay. But do not for all time assume that any right that we may exercise in the future will necessarily be tainted and the corrupt product of Mr. Dondero's instructions. You will see today on the evidence that that has not happened and it will not happen.

And whatever Mr. Dondero may have agreed to, we are separate entities. Again, the Funds have -- are not

controlled or owned, and Mr. Dondero is not on the board. So whatever he may have agreed to is between the Court and the Debtor and him, but he never agreed to that on behalf of the Funds. He never agreed to that on behalf of the Advisors, who have their own independent fiduciary duties and duties under the law.

So, Your Honor, there will be no substantial likelihood of success on the merits. There will be no likelihood of success on the merits. And I'm talking about the post-assumption, post-confirmation time frame. The issue is fundamentally different pre-assumption and pre-confirmation. But post-assumption and post-confirmation, the Debtor will not show a likelihood of success on the merits. The Debtor will not show any irreparable injury. None.

Mr. Seery will testify that managing these agreements for the coming couple or three years will have some value to the Debtor. He doesn't know what the profitability of that is to the Debtor. You will hear that, in fact, managing these contracts for the next two years does not bring any profitability to the Debtor. The Debtor will lose money managing of them. But whatever damages there are are monetary damages, and monetary damages are not an irreparable injury as a matter of law.

Now, the Debtor says, well, the Court can enter an injunction in the aid of restructuring, but this injunction

will happen after restructuring.

On the balance of harm and public interest, Your Honor, I think we're dealing with more than a billion dollars of clean, innocent third-party funds. The balance of harm here weighs against granting this injunction. If we try to do anything in the post-confirmation world, the Debtor has all of its rights and remedies to contest what we do. If we do it wrong, we're liable in contract or in tort, there's monetary damages, and the Debtor has already successfully organized.

But if the Debtor does something wrong in the future and we cannot take action to stop a gross mismanagement or a denution [sic] of the Debtor or an abscondence with funds, then think about the harm to the innocent investors here. Because if we even go to court, your Court, any court, we will be in violation of a federal court injunction.

Your Honor, this is not the appropriate purpose of an injunction for the preservation of the status quo. The status quo, by definition, cannot extend post-assumption or post-confirmation. This is not a proper exercise of equity. We have done nothing wrong, we have threatened to do nothing wrong, and we will do nothing wrong to justify forever being prejudiced and enjoined from exercising our contractual and statutory rights.

Your Honor, this TRO extends through February the 15th. We asked the Debtor to continue this hearing. We asked the

Debtor to go to our independent boards and seek approval of the same settlement that the Debtor has with CLO Holdco, which we learned about last night. We simply haven't had the time to get those boards aligned up and present a settlement to them. We're trying to put together a competing plan.

Your Honor, there is no reason to go forward today except, like Mr. Morris said, power. Power. Mr. Seery's power, Your Honor. Not ours. Mr. Seery's power in perpetuity or for judicial immunity, get out of jail free card. Thank you.

THE COURT: All right. Mr. Morris, you may call your witness.

MR. MORRIS: Yeah. I just want to make a motion to strike the notion of a get out of jail free card. I appreciated everything counsel had to say, but I think that's a little -- a little over the top.

We call Mr. James Dondero, please.

THE COURT: Mr. Dondero, --

MR. RUKAVINA: Your Honor, bear with me.

THE COURT: Okay.

MR. RUKAVINA: Your Honor, bear with me. I'm going to get out of this chair. Mr. Dondero will get in this chair. And so that there's no reverberation, I will be sitting next to Mr. Dondero in case I have to make any objections.

THE COURT: Okay. All right. Good morning, Mr. Dondero.

MR. DONDERO: Good morning.

THE COURT: Please raise your right hand.

JAMES DONDERO, DEBTOR'S WITNESS, SWORN

THE COURT: Thank you. Mr. Morris, go ahead.

MR. MORRIS: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero. Okay. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor. Can you hear me okay, sir?

A Yes.

Q There are no board members here on behalf of any of the Funds to testify or offer any evidence; isn't that right?

A Not that I'm aware of.

Q Okay. And you knew the hearing was going to be today on the preliminary injunction, right?

A Yes.

Q And you had an opportunity to confer with the boards of the Funds in advance of this hearing, right?

A No.

Q There's no -- there's no -- no board member is expected to testify, fair?

A Correct.

Q So the Court isn't going to hear any evidence as to the

board's perception of what's happening here, right?
A Not that I'm aware of.
Q Okay. Until January 9th, 2020, you controlled the debtor Highland Capital Management, LP; isn't that right?
A I don't remember exactly when these -- when the independent board was put in place, but up until around that time, I believe.
Q Okay. So, January 2020?
A Yes.
Q And during that month, you completed an agreement with the Creditors' Committee where you ceded control of the Debtor pursuant to a court order, right?
A Pursuant to a court ...? I thought it was pursuant to a negotiation where they would have fiduciary responsibility to the estate in my absence. That's -- that's what I think the (garbled).
Q Okay. You're aware -- so you entered into an agreement with the Creditors' Committee pursuant to which you ceded control of the Debtor, right?
MR. RUKAVINA: Your Honor, I'll object. That agreement speaks for itself. And if Mr. Morris wants to present it to Mr. Dondero, he can.
THE COURT: Um, --
MR. MORRIS: Sure. Ms. Canty, can we please put up --

THE COURT: All right. Well, I --

MR. MORRIS: I'm happy to put it up, Your Honor.

THE COURT: I overrule that objection. You can ask. And then if he's not sure, you can present the agreement. All right? Go ahead.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Mr. Dondero, is there any doubt in your mind that in January of 2020 you gave up control of Highland in favor of an independent board at the Strand Advisors level?

A No. I -- yes, I agree with that.

Q Okay. And do you recall that, in connection with that agreement, the Court entered an order?

A Several orders. Which one?

Q Okay.

MR. MORRIS: Can we please put up Docket No. 339?

MS. CANTY: Sure, just one second.

MR. RUKAVINA: And you have it here.

John, I have the order if just want Mr. Dondero to review it.

MR. MORRIS: I think -- I think everybody should have the benefit of seeing it. But thank you very much.

Your Honor, while we take this moment, can you just remind me of when the Court needs to take a break today, so that I'm mindful of that and respectful of your time?

THE COURT: 11:30.

MR. MORRIS: Okay. And what time will we reconvene?

THE COURT: Well, I have said 1:00. I hope it can be a little sooner, but let's just plan on 1:00, okay, so there's no confusion.

MR. MORRIS: Okay. All right. All right. So, on the screen here, we have Exhibit OOOO, which is in the record.

BY MR. MORRIS:

Q This is an order that was entered by the Court on January 9th, 2020. Do you see that, sir?

A Yes.

MR. MORRIS: Can we scroll down to Paragraph 9, please? (Pause.) Are you having problems, Ms. Canty?

MS. CANTY: It's on the screen. You can't see it?

MR. MORRIS: Yeah. Can you scroll down to Paragraph 9?

MS. CANTY: It's on Paragraph --

MR. MORRIS: That's on Page 2, I believe.

MS. CANTY: Yeah, I have it up. I'm not sure what the disconnect is, because I can see it on my screen. I'm going to stop it and reshare it.

MR. MORRIS: Thank you very much.

(Pause.)

MS. CANTY: Do you see it now?

MR. MORRIS: Okay. Beautiful.

BY MR. MORRIS:

Q Mr. Dondero, if you'd just read Paragraph 9 out loud.

A (reading) Mr. Dondero shall not cause any related entity to terminate any agreements with the Debtor.

Q Okay. So you understood, as part of the corporate governance settlement pursuant to which you avoided the imposition of a trustee, that you agreed that you wouldn't cause any related entity to terminate any agreements with the Debtor, right?

A Uh, --

Q Is that correct? You understood that paragraph?

A Yes.

Q Okay. And you didn't appeal this particular order, did you, sir?

A I -- I believe I've refuted -- I've adhered to that order entirely.

Q Okay. NexPoint Advisors LP, is one of the defendants in this matter, right?

A Yes.

(Pause.)

Q Can you hear me, sir?

A Yes. Yes, I said, "Yes."

MR. NICHOLSON: Well, John, did you -- did you ask a question? Because you went offline for a few seconds there.

MR. MORRIS: I asked whether NexPoint Advisors, LP

was an advisory firm.

THE WITNESS: Yes.

BY MR. MORRIS:

Q And you have a direct or indirect ownership interest in NexPoint Advisors, LP, correct?

A Yes.

Q And you understand that, based on that direct or indirect ownership interest, NexPoint Advisors, LP is a related entity under Paragraph 9 of this order, right?

A Yes.

Q Okay. Highland Capital Management Fund Advisors, LP is one of the other defendants in this case, right?

A Yes.

Q And we'll refer to that entity as Fund Advisors; is that fair?

A Yes.

Q And we'll refer to Fund Advisors together with NexPoint Advisors, LP as the Advisors; is that fair?

A Yes.

Q Okay. Fund Advisors is also an advisory firm; is that (audio gap)?

A I missed that last question.

MR. RUKAVINA: John, you're freezing up on us. Is it on our end, Your Honor, or is it on Mr. Morris's end?

MR. MORRIS: Just let me know -- just let me know

when it happens.

THE COURT: Yes. I'm hearing him. But go ahead, Mr. Morris. Let's try again.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q You have a direct or indirect ownership interest in Fund Advisors, correct, sir?

A Yes.

Q (audio garbled) And based on that direct or indirect interest, you would agree that Fund Advisors is a related entity for purposes of this order, correct?

A Yes.

Q In addition to your ownership interest, you're also the president of Fund Advisors; is that (audio gap)?

THE COURT: All right. Now --

THE WITNESS: I believe so.

THE COURT: Yes. Now I'm starting to have some trouble, Mr. Morris. Every once in a while, you're freezing towards the end of a sentence. So I don't know what can be done, but it's --

MR. MORRIS: All right. Let me know if that continues.

THE COURT: Okay.

BY MR. MORRIS:

Q To use your words -- to use your words, Mr. Dondero, it's

fair to say that you generally control Fund Advisors, right?
A Yes.
Q And based on that, you acknowledge that Fund Advisors is a related entity under the Court's order, correct?
A Yes.
Q And together, the Advisors that you own and control manage certain investment funds, correct?
A Yes.
Q And three of those funds are defendants in this case, correct?
A Yes.
Q And you are the portfolio manager of each of those funds; is that right?
A I believe so.
Q Okay. Let's talk about the events that led to this matter. CLO stands for Collateralized Loan Obligations, correct?
A I'm sorry. Repeat that, please?
Q Sure. CLO stands for Collateralized Loan Obligations, correct?
A Yes.
Q Years ago, the Advisors that you own and control caused the investment funds that they manage to buy the interests in CLOs that are managed by the Debtor, correct?
A Yes. Yes.

Q Okay. And those Funds still hold an equity interest today, correct?
A Yes.
Q And K&L Gates is one of the law firms that represents the Advisors and the Funds that are managed by the Advisors, correct?
A Yes.
Q You would agree that the Debtor is party to certain contracts that give it the right and the responsibility to manage certain CLO assets, right?
A Yes.
Q And you recall that --
MR. RUKAVINA: Your Honor, Mr. Morris is frozen on our end.
THE COURT: Yes. Mr. Morris, you just froze.
MR. RUKAVINA: We heard nothing, Mr. Morris.
THE COURT: Yes.
MR. MORRIS: Okay.
BY MR. MORRIS:
Q Sir, do you recall that you resigned from the Debtor on or around October 10th, 2020?
A Yes.
Q Okay. And shortly thereafter, K&L Gates sent a couple of letters to the Debtor on behalf of the Advisors and the Funds, correct?

A Yes.

Q Okay.

MR. MORRIS: Can we take a look at these? These are documents that were admitted into evidence in a different matter, but they're actually referred to in his prior testimony, which is in evidence in this case. So I would just ask Ms. Canty to go to Trial Exhibit B, which was filed in the Adversary Proceeding 20-3190 at Docket 46. And for the record, it's PDF Page #184 out of 270. I just want to take a look at these two letters.

BY MR. MORRIS:

Q Okay. Do you see this letter, sir?

A Yes.

Q And NexPoint is one of the defendants here; is that right?

A Yes.

Q And that's one of the Advisors that you own and generally control, correct?

A Yes.

Q And so this letter is sent less than a week after you've left Highland Capital Management, right?

A Yes.

Q Do you recall this particular letter?

A No.

Q Can -- you're familiar with the substance of this letter and the other one that was sent in November, correct?

A Could you pull it a little higher and let me read it?

Q Yes. Sure.

MR. RUKAVINA: If this is an exhibit, I can show it to him as an exhibit, Mr. Morris.

MR. MORRIS: I don't know that this is one of the marked exhibits. It's one of the exhibits that's used within his prior testimony. So, but I want to give Mr. Dondero a chance to review it. And please let us know if you need to scroll further down.

(Pause.)

MR. RUKAVINA: You're going to have to scroll down.

THE WITNESS: Scroll down a little further, please.

(Pause.)

MR. RUKAVINA: Mr. Morris, can you please scroll down? Neither Mr. Dondero nor I can read the balance.

BY MR. MORRIS:

Q There you go. (Pause.) So, you see at the top of the page there there is a reference to the sale of assets and a, quote, "a rush to sell these assets at fire sale prices." Is that what you think -- did you think that Mr. Seery was selling (audio garbled) CLO assets at fire sale prices in October 2020, --

MR. RUKAVINA: Your Honor, --

MR. MORRIS: -- less than a week after --

MR. RUKAVINA: Your Honor, I'll object. We did not

hear Mr. Morris's question.

THE COURT: All right. Could you repeat the question?

MR. MORRIS: Okay. Yes, Your Honor.

BY MR. MORRIS:

Q Mr. Dondero, on or about October 16th, did you personally believe that Mr. Seery was in a rush to sell CLO assets at fire sale prices?

A I believe he had no business purpose to sell any of the assets, which I believe he stated that to Joe Sowin, our trader. I -- I -- there was no business purpose stated or ever given or obvious from the sales. And --

Q Okay.

A -- I (indecipherable) draft this letter.

Q Okay.

MR. MORRIS: I move to strike, Your Honor. It's a very simple question --

THE COURT: Sustained.

MR. MORRIS: -- and it has to do solely with Mr. Dondero's state of mind.

BY MR. MORRIS:

Q Mr. Dondero, on or about October 16th, did you personally believe that Mr. Seery was in a rush to sell CLO assets at fire sale prices?

A He was in a rush to sell them for some reason with no

business purpose. I don't know the reason.

THE COURT: All right. Can you --

BY MR. MORRIS:

Q Okay. And you never asked him, right?

THE COURT: Yes. Yes or no answer, Mr. Dondero.

THE WITNESS: Never asked him.

MR. MORRIS: Okay. Can we turn to the next exhibit, which is Exhibit C on that same docket?

(Pause.)

BY MR. MORRIS:

Q While we're waiting, can you just read the last sentence of the paragraph that ends at the top of the page, Mr. Dondero, beginning, "Accordingly"?

A (reading) Accordingly, we hereby request that no CLO assets be sold without prior notice and prior consent from the Advisors.

Q Are you aware of any contractual provision pursuant to which the Funds or the Advisors can -- can expect that the Debtor will refrain from any -- selling any assets without giving prior notice and obtaining prior consent from those entities?

A I think the documents have an overall good-faith/fair-dealing clause which would cover something like this, I believe.

Q Your -- is it your testimony, sir, that the duty of good

faith and fair dealing requires the Debtor to give notice to the Advisors and to obtain the Advisors' prior consent before they can sell any CLO assets?

A Well, I think -- yes, I do. I think --

Q All right.

A Yes. Yeah.

Q Okay. And then the next month, another letter was sent by NexPoint to Mr. Seery. Do you recall that?

A Not specifically. If you bring it up, we can talk about it.

MR. MORRIS: Can we scroll down a little bit?

(Pause.)

MS. CANTY: John, are you talking to me? I was frozen out. I just got back on. I apologize.

MR. MORRIS: That's okay. Can we just scroll down so Mr. Dondero can see more of this particular letter?

MS. CANTY: Okay.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Can you just read out loud, Mr. Dondero, out loud the last two sentences, please, beginning with, "We understand"?

A (reading) We understand that Charitable DAF Holdco, Ltd. has made a similar request. Accordingly, we hereby re-urge our request that no CLO assets be sold without prior notice to and prior consent from the Advisors.

Q What's the Charitable DAF Holdco, Ltd.?
A I think that's who you settled with yesterday.
Q Do you have an interest in that entity?
A No. It's a bona fide charity. It was one of the largest in Dallas before it got cut in half by Acis.
Q Does -- are you familiar with the Get Good and the Dugaboy Investment Trusts?

MR. RUKAVINA: Your Honor, at this time I would object to relevance. I don't see what this has to do with tortious interference and stay violation on December 22nd and December 23rd, 2020.

THE COURT: Response?

MR. MORRIS: Your Honor, I'm trying to establish that Charitable DAF Holdco, Ltd. is another entity in which Mr. Dondero holds a beneficial interest.

THE COURT: Okay. Overrule the objection.

MR. RUKAVINA: John, you're not only frozen, now you're off.

MR. MORRIS: Yeah, I can see myself. You can't hear me?

MR. RUKAVINA: We can now, but Your Honor, we lost Mr. Morris for a bit there.

THE COURT: All right. I think we were --

MR. MORRIS: Okay.

THE COURT: -- waiting on an answer from Mr. Dondero,

actually.

THE WITNESS: We didn't hear the question at --

BY MR. MORRIS:

Q Sure. Are you familiar with the Get Good and Dugaboy Investment Trusts?

A Yes.

Q Are you the beneficiary of those trusts?

MR. RUKAVINA: Your Honor, again, objection to relevance. These are non-parties, and what his personal interests are has no relevance to this.

THE COURT: Overruled.

THE WITNESS: The Get Good Trust, Get -- I believe those are defective grantor trusts. I don't believe I have any interest whatsoever in those. Dugaboy is a perpetual Delaware trust. I don't know how that's set up, but I believe I do have an interest there until I pass.

BY MR. MORRIS:

Q In fact, you're -- you're the sole beneficiary of the Dugaboy Investment Trust, right?

A Until I pass. It's a -- it's a estate planning trust.

Q I appreciate that. And the Dugaboy and the Get Good Trusts are the owners of the Charitable DAF Holdco Ltd., correct?

A No. Not as far as I know.

Q Okay.

A (garbled) time at all.
Q All right. So we just looked at these two letters, sir. And you were familiar with the substance of the letters before they were sent, right?
A Uh, just --
MR. MORRIS: You can take it down, Ms. Canty.
THE WITNESS: Just generally. Again, I wasn't involved directly with the letters.
BY MR. MORRIS:
Q You were aware of the letters before they were sent, right?
A Yes.
Q And you discussed the substance of the letters with NexPoint, correct?
A Not the substance of the letters, just the substance of the issue.
Q You actually discussed the substance of the letters with NexPoint, correct?
A I -- Again, I remember it being the substance of the issue. Generally, at most, the substance of the letters.
Q And you discussed the substance of the letters with the Advisors' internal counsel, too, right?
A The sub -- generally, the substance, yes, but more the issue than the letter.
Q Okay. If I pull up your transcript from the TRO hearing,

would that refresh your recollection that you discussed the substance of these letters with NexPoint and with the Advisors' internal counsel?

A I'd like to clarify with the testimony I just gave.

Q Okay. Would you -- do you have any reason to believe that you did not previously testify that you discussed the substance of the letters with NexPoint and with NexPoint Advisors' internal counsel?

A I repeat the same testimony. Generally. Like, those letters that you put on the screen, I have no recollection of those specifically.

MR. MORRIS: Ms. Canty, can we please call up on the screen Exhibit NNNN, which was the transcript from the January 8th, 2021 preliminary injunction hearing?

MR. RUKAVINA: Mr. Morris, just one sec. I'm trying to find it on paper.

MR. MORRIS: Yeah. It's four Ns.

MR. RUKAVINA: One, two, three, four. (inaudible) put that on the screen.

MS. CANTY: John, I'm not sure what's going on, but it won't come up on the screen. I've tried three times. I'm going to keep trying.

MR. MORRIS: All right. I have it in front of me. Do you have it, too?

MR. RUKAVINA: Yes, the witness has it --

MR. MORRIS: Okay.

MR. RUKAVINA: -- in front of him. This is NNNN, just to confirm?

MR. MORRIS: Yes. And it is the January 8th transcript.

BY MR. MORRIS:

Q Mr. Dondero, were you asked these questions and did you give these answers? Question: Are you familiar with --

MR. RUKAVINA: Where are you, John? Where are you? Where are you? We -- we -- we --

MR. MORRIS: I apologize. Page 40. I'm going to read Page 40, Lines 1 through 14.

MR. RUKAVINA: Okay. He has it in front of him, if you just want him to read it.

BY MR. MORRIS:

Q Did you give these answers at Page 40, beginning Line 1:

"Q And were you -- and you were familiar, you were aware of these letters before they were sent; is that correct?

"A Yes.

"Q And you generally discussed the substance of these letters with NexPoint; is that right?

"A Generally, yes.

"Q You discussed the letters with the internal counsel; is that right?

"A Yes.

"Q That's D.C. Sauter?

"A Yes.

"Q And you have been on some calls with K&L Gates about these letters, right?

"A I believe so.

"Q And you knew these letters were being sent, correct?

"A Yeah. They're -- they're reported.

Q Did you give those answers to those questions at the prior hearing?

A I -- I believe it's what I -- it's almost exactly what I just said, but yes.

Q And you supported the sending of the letters; isn't that right?

A Absolutely.

Q And you encouraged the sending of the letters, right?

A Absolutely.

Q Around Thanksgiving, you learned that Mr. Seery had given a direction to sell certain securities owned by CLOs managed by the Debtor, correct?

A Yes.

Q And when you learned that, you personally intervened to stop the trades, correct?

A Yes.

Q Let's -- I want to look at that email string that we looked at once before. It can be found at Trial Exhibit D found on Docket No. 46 in the adversary proceeding. It's PDF Number -- it's PDF Page 189 of two (garbled).

MR. RUKAVINA: Did you catch that?

THE COURT: Which -- which exhibit number -- letter is it?

MR. MORRIS: It's on the docket in the Adversary Proceeding 20-3190. And in that adversary proceeding, at Docket No. 46, you've got the Debtor's exhibit list. And Exhibit D, which can be found at PDF Page 189 of 270, is the email string I'm looking for.

I apologize, Your Honor. It wasn't until I was reading the transcript yesterday that I realized I needed these documents. But they are in the record. Obviously, they're referred to in the transcript that is in the record.

THE COURT: Okay.

MR. RUKAVINA: Your Honor, I would like to interject for the record here that this is the first time my clients have been sued. They have a right to be confronted with the witnesses and testimony and evidence against them. So if Mr. Morris wants to introduce this as an exhibit here today, that's one thing, but I object to any notion that there's a prior record that is going to tie my clients' hands. It might tie Mr. Dondero's hands, but not my clients' hands.

MR. MORRIS: I'd move for the introduction into evidence of this document that has emails not only from Mr. Dondero, but from Joe Sowin, the head trader of the Defendants.

MR. RUKAVINA: And Your Honor, I have no problem with that admission. I just want to make it clear that we're not conceding that whatever happened in this case previous to this is a part of today's record. That's all. So I do not have a problem with the admission of this. I would, however, ask you, Mr. Morris, to have someone email it to us so that I can use it today if I need to.

THE COURT: All right.

MR. MORRIS: Okay. Will do.

THE COURT: So, I'll --

MR. MORRIS: We'll do that at the --

THE COURT: I'll admit it into evidence. You'll need to not only email it Mr. Rukavina, but you'll need to file a supplement to your exhibit and witness list after the hearing showing the admission of --

MR. RUKAVINA: And Mr. Morris, if you could email it to Mr. -- if you could email it to Mr. Vasek as well, because obviously I can't get to it now. Thank you.

MR. MORRIS: Sure.

THE COURT: All right. So this --

MR. MORRIS: Okay. So, --

THE COURT: For the record, let's just be clear what the record is -- this is going to be called on the record. I think you are up to SSSSS, so this would be TTTTT when you file it on the record. All right? Go ahead.

MR. MORRIS: Thank you very much, Your Honor.

(Debtor's Exhibit TTTTT is received into evidence.)

BY MR. MORRIS:

Q Mr. Dondero, you recall looking at this email string at the last hearing, right?

A Yes.

Q Let's start at the bottom, please, with Mr. Covitz's email.

(Pause.)

MR. RUKAVINA: Hey, John, real quick, now we've lost you. We've lost you and we're not seeing anything from your assistant. Do you have the email, Mr. Vasek?

MR. MORRIS: I'm here. Can you hear me?

MS. CANTY: I'm here. (garbled) on the screen.

MR. MORRIS: Yeah. Can we scroll down to the bottom?

MS. CANTY: I did. I don't know why it's not showing on you guys' screen.

MR. MORRIS: Hopefully this gets fixed. Yeah. We've never had this problem before, Your Honor. I'm not sure what the issue is, but I do apologize.

THE COURT: All right. Well, I can hear you, but we

don't see movement of the exhibit.

MR. MORRIS: Yeah. When I began earlier today by suggesting that this was going to be challenging, this was not one of the challenges I anticipated.

THE COURT: Okay. All right.

MR. RUKAVINA: Do you have the email yet?

MS. CANTY: I'm sorry. I don't know what's happening on this end. I have three streams of Internet going, and I don't think it's the Internet. I don't know what's going on.

MR. MORRIS: Hmm.

MR. RUKAVINA: Yeah, John, what I'm suggesting is that you have an associate email it to Mr. Vasek immediately and then we can present it to Mr. Dondero.

MR. MORRIS: I'll tell you what. While that -- one more try.

MR. CANTY: Can you see it now?

MR. MORRIS: Okay. Yes.

BY MR. MORRIS:

Q All right. Mr. Dondero, Hunter Covitz is an employee of the Debtor, right?

MR. RUKAVINA: Hold on a sec. Hold on a sec.

Your Honor, I believe that I have the right to see the full email here. I believe that Mr. Dondero does. And we've just seen the first little bit and now some middle piece.

THE COURT: All right. So are you saying --

MR. MORRIS: And in the order that --

THE COURT: -- you want to see the whole string?

MR. RUKAVINA: Well, I think -- Mr. Dondero, do you need to see the whole string? I don't know what this is, but maybe you do.

MR. DONDERO: It depends on what the question is. I can answer some questions off of this email.

THE COURT: Okay, let's go.

MR. MORRIS: Yeah.

BY MR. MORRIS:

Q All right. So, for the moment, Mr. Covitz is an employee of the Debtor, correct?

A Yes.

Q And he's the author of this email in front of us, correct?

A Yes.

Q And Mr. Covitz helps to manage the CLO assets on behalf of the Debtor, correct?

A Yes.

Q Mr. Covitz is giving directions to Matt Pearson and Joe Sowin to sell certain securities held by the CLOs, correct?

A Yes.

Q And if we can scroll up, I think we can see that you received a copy of this email?

(Pause, 11:15 a.m.)

MR. MORRIS: What I would like to do instead, we'll

take a break in about 15 or 20 (audio gap). When we disconnect, we'll get a better connection after the break. And in the interim, I've got testimony that I would like that's already been admitted into the record but there's portions of which I would like to read into the record from Dustin Norris, who is the executive vice president for each of the Defendants. And maybe it would be easiest for me to do that.

THE COURT: Okay.

MR. MORRIS: All right. On Docket No. 39.

MR. RUKAVINA: Your Honor, I apologize. Your Honor, I apologize. We did not hear --

MR. MORRIS: I'm going to read into the record a portion of Mr. Norris' testimony from the December 16th hearing.

MR. RUKAVINA: Your Honor, I do not see that transcript in the exhibits. If Mr. Morris could give me an exhibit.

MR. MORRIS: Exhibit B as in boy.

MR. RUKAVINA: Thank you.

MR. MORRIS: All right. Instead of putting it on the screen, if we could take the exhibit down, Ms. Canty. He can just follow along. Beginning at Page 38, Line 7 through -- 7 through 17.

Are you there, Mr. Rukavina?

MR. RUKAVINA: I am. Thank you. I have it in front of Mr. Dondero.

MR. MORRIS: Okay. Page 38, Lines 7 through 17:

"Q I think you testified that you're one of the executive vice presidents at NexPoint Advisors, one of the Movants. Is that right?

"A That's right.

"Q Who is the president of NexPoint Advisors, LP?

"A Mr. Dondero.

"Q And you report directly to him; is that right?

"A I do.

"Q You're also the executive vice president of Fund Advisors, another Movant; is that right?

"A Correct."

MR. MORRIS: Beginning on Page 38, Line 25:

"Q You're also the executive vice president (audio gap) that are managed by the Advisors here, right?

"A Yes. That is correct."

MR. MORRIS: Then going back to Page 35, beginning at Line 15:

"Q To be clear here, there are five moving parties; is that right?

"A That's correct. The two Advisors and the three Funds.

"Q And one of the advisory firms is Highland Capital

Management Fund Advisors, LP; is that right?

"A That's correct.

"Q And I'll refer to that as Fund Advisors; is that okay?

"A That's great.

"Q James Dondero and Mark Okada are the beneficial owners of Fund Advisors, correct?

"A That is my understanding.

"Q And your understanding is that Mr. Dondero controls Fund Advisors, correct?

"A That's correct.

"Q And the other advisory firm that brought the motion is NexPoint Advisors, LP; is that right?

"A That is correct.

"Q And Mr. Dondero is the beneficial owner of NexPoint; is that right?

"A A family trust where Jim is the sole beneficiary, I believe, controls or owns NexPoint Advisors.

"Q Okay. And Mr. Dondero --

"A Or 99 percent of NexPoint Advisors.

"Q Mr. Dondero controls NexPoint; is that right?

"A Correct."

MR. MORRIS: Continuing at Line 16 on Page 36:

"Q All right. And I'm going to refer to Fund Advisors and NexPoint as the Advisors going forward; is

that fair?

"A That's fair.

"Q Each of the Advisors manages certain funds; is that right?

"A That is correct.

"Q And three of those funds that are managed by the Advisors are Movants on this motion, correct?

"A Correct.

"Q All right. The Advisors caused these three Funds to invest in CLOs that are managed by the Debtor; is that right?"

"A --"

MR. RUKAVINA: Your Honor, I object. Is there a question at the end of this? I mean, Mr. Dondero can't possibly remember all this and then be asked a question.

MR. MORRIS: He doesn't have to answer any questions. I'm just reading the evidence into the record.

THE COURT: Okay.

MR. RUKAVINA: Your Honor?

MR. MORRIS: Since we're having difficulty --

MR. RUKAVINA: Your Honor, that's a matter for summation. That's -- this is a question and answer, I submit.

THE COURT: Well, I overrule.

MR. MORRIS: Your Honor, here's -- here's --

THE COURT: This has been admitted into --

MR. MORRIS: Yeah.

THE COURT: -- evidence. And if he wants to highlight to the Court portions of the evidence, he can. Go ahead.

MR. MORRIS: Thank you, Your Honor.

"A The portfolio managers working for the Advisors did. That's correct.

"Q And Mr. Dondero is the portfolio manager of the Highland Income Fund; is that right?

"A He is one of the portfolio managers for that Fund.

"Q And he's also --

"A I believe there are two.

"Q And he's also a portfolio manager of NexPoint Capital, Inc., one of the Movants here, right?

"A That is correct.

"Q And he's also the portfolio manager of NexPoint Strategic Opportunities Fund, another Movant; is that right?

"A Yes. That is correct."

MR. MORRIS: Going to Line -- Page 41, Lines 6 through 9:

"Q The whole idea for this motion initiated with Mr. Dondero; isn't that right?

"A The concern, yes, the concern originated, and his concern was voiced to our legal and compliance team."

MR. MORRIS: Page 42, Lines 4 through 11:

"Q None of the Movants are parties to the agreements between the Debtor and each of the Debtors pursuant -- each of the CLOs pursuant to which the Debtor serves as portfolio manager; is that correct?

"A I believe that is correct. One, I think, important -- even though they're not (audio gap), they are the -- they have the economic ownership of each of these CLOs.

"Q But they're not party to the agreement; is that right?

"A Not that I am aware of."

MR. MORRIS: Page 42, Line 25:

"Q Okay. It's your understanding, in fact, that nobody other than the Debtor has the right or the authority to buy and sell assets on behalf of the CLOs listed on Exhibit B, correct?

"A That is my understanding.

"Q Okay. And it's also your understanding, your specific understanding, that holders of preferred shares do not make investment decisions on behalf of the CLO; is that right?

"A (audio gap)

"Q And that's something the Advisors knew when they decided to invest in the CLOs on behalf of the Movant

Funds; is that fair?

"A That's right. And at that time, the knowledge in the purchase was with Highland Capital Management, LP and the portfolio management team at the time.

"Q And it's still with Highland Capital Management, LP; isn't that right?

"A That's correct. I'm not sure that the portfolio management team looks the same, but it was HCMLP."

MR. MORRIS: Moving on to Page 46, Line 22:

"Q The only holders of preferred shares that are pursuing this motion are the three Funds managed by the Advisors, right?

"A In this motion, yes.

"Q You're not aware of any holder of preferred shares pursuing this motion other than the three Funds managed by the Advisors, correct?

"A No, I'm not aware of any others.

"Q You didn't personally inform any holder of preferred shares, other than the Funds that are the Movants, that this motion would be filed, did you?

"A No, I did not.

"Q You're not aware of any steps taken by either of the Advisors to provide notice to holders of preferred shares that this motion was going to be filed, are you?

"A I'm not, no.

"Q And you're not aware of any attempt that was made to obtain the consent of all of the noteholder -- of all the holders of the preferred shares to seek the relief that is sought in this motion, correct?

"A That's correct.

"Q You don't have any personal knowledge, personal knowledge, as to whether any holder of preferred shares other than the Funds managed by the Advisors wants the relief sought in this motion, correct?

"A Correct.

"Q You don't have any personal knowledge as to whether any of the CLOs that are subject to the contracts that you described want the relief that's being requested in this motion, right?

"A That's correct. I have not spoken or been involved at all directly with the CLOs. I'm representing the Funds."

MR. MORRIS: Moving to Page 49. I just have a bit more, Your Honor. Page 49, Line 9. And this is the reference to his declaration.

"Q And Paragraph 9 refers to a transaction involving SSP Holdings, LLC; do I have that right?

"A That's correct.

"Q Do you know what SSP stands for?

"A See if we say it in there. SSP Holdings, LLC.

"Q Right. Do you know what SSP stands for?

"A I don't. Something Steel Products. I --

"Q Okay. You don't need to guess. These are the only two transactions that the Movants question; is that right?

"A These transactions, as well as certain transactions around Thanksgiving time.

"Q Okay. We'll talk about those. But those transactions about -- around Thanksgiving time aren't in your (audio gap)?

"A Not specifically mentioned by name.

"Q Okay. Let's talk about the two that are mentioned by name, Trussway and SSP. The Movants do not contend that either transaction was the product of fraudulent conduct, do they?

"A No.

"Q The Movants do not contend that the Debtor breached any agreement by effectuating these transactions, do they?

"A I don't believe so.

"Q In fact, the Movants do not contend that the Debtor violated any agreement at any time in the management of the CLOs listed on Exhibit B; is that right?

"A That's right.

"Q The Movants don't even question the Debtor's business judgment, only the results of the trans -- of these two transactions. Is that right?

"A That's right. And the results is the key here, and the approach."

MR. MORRIS: Moving on to Page 51, Line 8:

"Q Sir, you never asked the Debtor what factors it considered in making these trades, right?

"A I did not.

"Q And you have no reason to believe that anyone on behalf of the Movants ever asked the Debtor why it executed these (audio gap), right?

"A I don't have any knowledge. There could have been somebody from (audio gap) Movants. But I do not."

MR. MORRIS: Page 54, Line 19:

"Q Let's just talk briefly about the transactions that occurred (garbled) Thanksgiving. They're not specifically referred to in your declaration; is that right?

"A That's correct.

"Q And you have no knowledge about any transaction that Mr. Seery wanted to execute around Thanksgiving; is that right?

"A I know there were transactions and there were concerns from our management team, but I'm not aware of

what those transactions were.

"Q In fact, you can't even identify the assets that Mr. Seery wanted to sell around Thanksgiving, or at least you couldn't at the time of your deposition yesterday. Is that right?

"A That's correct.

"Q And you have no knowledge as to why Mr. Seery wanted to make particular trades around Thanksgiving?

"A No, I don't.

"Q And in fact, you don't even know if the transactions that Mr. Seery wanted to close around Thanksgiving ever in fact closed. Is that fair?

"A Correct."

MR. MORRIS: Last one. Page 56, Line 1:

"Q Okay. To the best of your knowledge, does this document accurately reflect the composition of the boards of each of the three Movant Funds?

"A Yes, it does.

"Q Okay. John Honis, I think you mentioned him earlier. He's on all three boards. Is that right?

"A Yeah, that's correct. And the reason we're -- we're being -- we have a unitary board structure, so -- which is very common in '40 Act Fund land, where the board sits, for efficiency purposes, on multiple fund boards, and there's a lot of economies of scale from an

operating standpoint. So, yes, they sit on multiple boards.

"Q Okay. And for purposes of the '40 Act, Mr. Honis has been deemed to be an interested trustee. Is that right?

"A That's correct.

"Q Okay. But you don't specifically know what (audio gap) caused that designation; you only know that the designation exists. Right?

"A That's right. And I know they are disclosed in the proxy -- or, in the -- the relative filings related to those Funds.

"Q Okay. Three other people are common to all three Movant Funds. I think you've got Dr. Froehlich, Ethan Powell, --

MR. MORRIS: I think he -- pronunciation.

"A Froehlich.

"Q Ethan Powell and Bryan Ward. Right?

"A That is correct.

"Q Okay. All three of those individuals actually serve on the 11 or 12 boards that you mentioned earlier that are managed by the Advisors, right?

"A That is correct.

"Q And they're the same Funds for which you serve as the executive vice president, right?

"A This is correct -- yes. That's correct.

"Q So, for all of the Funds that are managed by the Advisors, you serve as executive vice president and all four of these directors -- trustees serve as trustees on the boards, right?

"A Yes, that's correct.

"Q Okay. In exchange for serving on all of these boards, the three individuals -- Dr. Froehlich, Mr. Ward, and Mr. Powell -- each receive $150,000 a year for services across the Highland complex; is that right?

"A That's correct.

"Q Dr. Froehlich has been serving as a board member across the Highland complex for seven or eight years now; is that right?

"A That's correct.

"Q Mr. --

"A I believe it's about seven or eight years.

"Q Mr. Powell, he actually was employed by Highland related -- Highland or related entities from about 2007 or 2008 until 2015, right?

"A That's correct.

"Q And Mr. Ward, the third of the independent trustees, he's been serving on a board or various of -- on various Highland-related funds on a continuous basis

since about 2004. Do I have that right?

"A Yeah, I believe that's correct."

MR. MORRIS: Your Honor, that concludes the reading of the portions of Mr. Norris's testimony that I wanted to present to the Court.

I know it's 11:30 now, and I would respectfully request that we simply adjourn and let Your Honor tend to your business.

THE COURT: Okay.

MR. MORRIS: And hopefully when we come back at 1:00 o'clock, we'll have a better connection.

THE COURT: All right. So, we are going to go into recess until 1:00 o'clock Central. Mike, can people just stay connected, or should they --

THE CLERK: Yes. They can stay. Yes.

THE COURT: You can stay or reconnect, whichever you want. But we'll see you at 1:00.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(A luncheon recess ensued from 11:33 a.m. until 1:37 p.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 afternoon. Please be seated. Apologies. I was a little ambitious in my time estimate. So,

anyway, I didn't have any control over getting in and out of Parkland Hospital, so I'm just grateful to be here.

All right. We were in the middle of direct examination of Mr. Dondero. Mr. Morris, are you ready to proceed?

MR. MORRIS: I am, Your Honor, and I'm hopeful that the computer issues have resolved themselves. It remains to be seen once we try. If problems arise again, I plan on just putting this on mute and dialing in through the telephone, kind of the other alternative.

THE COURT: All right.

MR. MORRIS: So (garbled) and I apologize to Mr. Dondero, too. I know I'm testing his patience. But it's not for any reason other than technological.

THE COURT: All right.

MR. MORRIS: And Your Honor, you don't have to apologize for keeping us waiting. That's okay.

THE COURT: Okay.

MR. MORRIS: But thank you.

THE COURT: All right. Mr. Dondero, --

MR. MORRIS: All right. So, --

THE WITNESS: Yeah.

THE COURT: I was just going to remind you, I have to remind you you're still under oath.

Are you ready, Mr. Morris?

MR. MORRIS: I am, Your Honor.

THE COURT: All right. You may proceed.

MR. MORRIS: And we're going to begin with the document that we had difficulty scrolling through earlier, which we have now sent to counsel, and that would be what was marked as Exhibit D on Docket No. 46.

THE COURT: All right.

MR. MORRIS: That's the email string that we had seen earlier that I think Your Honor admitted into evidence. Do I have that right?

THE COURT: Yes.

MR. MORRIS: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q So, let's just start at the bottom and see if we can do this more easily, Mr. Dondero. And again, I apologize for keeping you waiting before. Starting at the bottom, that's an email from Hunter Covitz. Do you see that?

A Yeah, I see it.

Q And he's an employee of the Debtor, right?

A Yes.

Q And your understanding is that Mr. Covitz actually helps the Debtor manage the CLO assets, right?

A Yes.

Q And in this email, Mr. Covitz is giving directions to Matt Pearson and Joe Sowin regarding certain securities held by the

CLOs, right?

A Yes.

Q And if we could scroll up, hopefully, we can see that you received a copy of this email.

MR. MORRIS: Yeah. Right there.

BY MR. MORRIS:

Q Do you see that?

A Yes.

Q And then -- and then you instructed the recipients of Mr. Covitz's email not to sell the SKY securities as had been instructed by Mr. Seery, correct?

A Yes.

Q And you understood when you gave that instruction that the people on the email were trying to execute trades that Mr. Seery had authorized, correct?

A Incorrect.

Q You didn't know that, sir?

A What I knew was that Seery had not authorized the trade, he had orchestrated the trade. Hunter is not an analyst with any particular knowledge. I called Hunter, why would he sell those? And he said Seery told him to sell those. So it wasn't that Seery authorized Hunter trading it. It was Seery told Hunter to trade it, which is -- which is a material difference in my mind.

Q Okay. So I'll ask you again. At the time you gave the

instruction, "No, do not," you knew that you were stopping trades that had been authorized and directed by Mr. Seery, correct?

A Yes.

Q You didn't speak with Mr. Seery before sending this email, did you?

A No.

Q And you took no steps to seek the Debtor's consent before instructing the recipients of this email to stop executing the SKY transactions. Is that right?

A I'm sorry. I missed the first part of that question.

Q Okay. You took no steps to seek the Debtor's consent before instructing the recipients of this email to stop executing the SKY transactions that were authorized by Mr. Seery, correct?

A I don't -- I'm not sure I was permitted to talk to Seery at this point, but I don't recall specifically, no.

Q You didn't seek consent, did you, before stopping these trades?

A No.

Q Okay. In response to your instruction --

MR. MORRIS: If we could scroll up to the next response.

BY MR. MORRIS:

Q You see the response from Mr. Pearson?

A Yes.
Q And in response to your instructions, Mr. Pearson canceled all of the SKY and AVYA sales that the Debtor had directed but which had not yet been executed, right?
A Yes.
Q Okay.
MR. MORRIS: Can we scroll up to the next email, please?
BY MR. MORRIS:
Q And you responded again, right? That's your response?
A Yes.
Q Can you read your response out loud, please?
A (reading) HFAM and DAF have instructed Highland in writing not to sell any CLO underlying assets. There is potential liability. Don't do it again, please.
Q And the writings that you refer to there are the two letters that we looked at earlier, the October 16 and the November 24 letter, right?
A I believe so. If not, if there's a third or fourth letter, all the letters in aggregate.
Q All right. And you, you interpreted those letters not as requests but, as you tell the recipients of your email here, that they were actually instructions, right?
A That was -- that was my choice of words. I don't know if I thought about it that clearly.

Q Okay. But the reci... you have no reason to believe that the recipient of this email wouldn't understand that you believed that Highland had been instructed not to do these trades, right?

A I'm sorry. Can you ask that again? I had no reason to believe what?

Q That's okay. I'll move on. At this juncture, the reference to potential liability was intended for Mr. Pearson, right?

A Frankly, when you violate the Advisers Act, the CFO has liability. I mean, I'm sorry, the chief compliance officer has liability, and anybody who has an awareness that it violates the Advisers Act has potential liability also.

Q And is it -- is it your testimony and your position that Mr. Pearson had potential liability under the Advisers Act for carrying out Mr. Seery's trade requests?

A Yes, once he was informed that the underlying investors didn't want assets sold and Seery had stated he had no business purpose in selling those assets.

MR. MORRIS: I move to strike the latter part of the answer, Your Honor. Mr. Dondero has testified repeatedly multiple times that he has never communicated with Mr. Seery about why he wanted to make these transactions.

THE COURT: I grant that.

BY MR. MORRIS:

Q Mr. Sowin responded and indicated that he would follow your instructions, right, if we scroll to the next email?
A I'm sorry. What part are you saying, or what part are you referring to?
Q Mr. Sowin. Who is Mr. Sowin?
A He's Matt Pearson's boss. He's the head trader.
Q And he works for the Advisors, right?
A Yes.
Q He's one of your employees, right?
A Yes.
Q Mr. Sowin followed your instructions as set forth in this email, right?
A He did a bunch of things, but, yes, I believe -- yes, that's a fair way to characterize.
Q And the only information that you know of that he's relying upon to state that Compliance should never have approved this order was your email that preceded it, right?
A No.
Q No? There's nothing else on this email other than your email that preceded it, correct?
A Correct.
Q Okay. A few days later, you learned that Mr. Seery was trying a workaround to effectuate the trades anyway, right?
A I believe so.
MR. MORRIS: Can we scroll up to the next email?

BY MR. MORRIS:

Q This is your response to Mr. Surgent, right?

A Yes.

Q Now, Mr. Surgent hasn't written anything. He is not part of this conversation, is he?

A No.

Q But you bring him into the conversation, right?

A Because he's the chief compliance officer at Highland, yes.

Q He's not -- he's not the chief compliance officer for the Advisors. He's the chief compliance officer for a company that you no longer work for, right?

A Correct, but he has personal liability for violations of the Advisers Act.

Q Okay. And you thought it was your responsibility to remind him of that, right?

A It was my view of the situation, and at least he could evaluate it himself if I reminded him of it, yes.

Q Uh-huh. What does it mean to do a workaround? What did you mean by that?

A There's a concept in compliance called you can't do something indirectly that you can't do directly, and that's what I was referring to there.

Q Does that mean that he was trying to effectuate the trade without the assistance of the Advisors?

A I believed he was trying to do it without compliance and without proper regard for investors, so that's why I described it as a workaround.

MR. MORRIS: I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:

Q I'm asking you a very specific question.

MR. MORRIS: Can I have a ruling, Your Honor? Thank you.

THE COURT: Yes.

BY MR. MORRIS:

Q Did you, when you used the phrase workaround, did you mean that he was trying to effectuate the trade without relying on the Advisors' employees?

A No.

Q Okay. But you found out about the trade and you thought it was a good idea to send Mr. Surgent this email, right?

A Yes.

Q Can you read the last line of your email?

A (reading) You might want to remind him and yourself that the chief compliance officer has personal liability.

Q Personal liability for effectuating a trade that Mr. Seery had authorized, correct?

A For violating the Advisers Act, is what I meant.

Q Uh-huh. Did you report anybody to the SEC?

A I would be happy to if it's permitted by the Court.
Q But you didn't -- you never asked the Court to do that, right?
A No.
Q It didn't seem important enough for you to take that step, right? But you wanted -- you had to make sure that you told Mr. Surgent that he might be personally liable, right? That was what you needed to do?
A Could you repeat that question, please?
Q You needed to make sure that Mr. Surgent knew that you were threatening him with personal liability if he followed Mr. Seery's instructions, right?
A No.
Q As a factual matter, you never asked Mr. Seery why he wanted to make these trades, right?
A I asked Joe Sowin to ask him.
Q As a factual matter, you never asked Mr. Seery why he wanted to make these trades, correct?
A I believe I wasn't permitted to talk to him.
Q In November 2020? What would have prevented that?
A I believe Scott Ellington was the go-between at that point in time.
Q Is it your testimony that you never spoke with Jim Seery in November 2020?
A I believe in an unauthorized fashion, the day after

Thanksgiving I talked to him, but that's the only day I can remember.

Q Should we call up the email where you threatened him not to do it again?

A That was an email.

Q Ah. So you could communicate by email? Did you ever send Mr. Seery an email and say, Why do you want to do these trades?

A No.

Q But somehow you thought you couldn't even speak to him? You couldn't speak to him but you can send him emails? That's the world that you live in, right? That's what you think?

A I have no comment on that.

Q All right. So, after this exchange, --

MR. MORRIS: And this is what I read out-of-order before, Your Honor. We moved to the December 16th hearing.

BY MR. MORRIS:

Q And you remember, Mr. Dondero, that the Defendants made that motion that asked the Court to stop the Debtor from trading in the CLO assets? Do you remember that?

A I'm sorry. You're asking me do I remember letters were sent? Yes.

Q No. Do you remember that there was a hearing in mid-December?

A Yes.

Q Okay.

MR. MORRIS: And Your Honor, for the record, Exhibit A is the Debtor -- is the Defendants' motion. Exhibit B is the transcript that we had looked at earlier or that I had read portions of earlier.

THE COURT: Okay.

MR. MORRIS: And Exhibit C is the order that the Court entered denying the Defendants' motion.

Can we call up Exhibit C, please?

BY MR. MORRIS:

Q All right. Do you see --

MR. MORRIS: If we could scroll to the very top, please. All right.

BY MR. MORRIS:

Q Do you see this document is dated December 18th, sir?

A Yes.

Q And if we scroll down, this is the order denying the motion of the Advisors and the Funds for an order trying to temporarily restrict the Debtor's ability as portfolio manager from initiating sales. Do you see that?

A Yes.

Q Okay. So, this is December 18th. And if you'll recall, the TRO was issued against you on December 10th. Do you remember that?

A I don't believe it was the 10th.

Q Okay. It was in December, and it was just before this. Is that fair?

A I believe there was an intent, and then the actual filing I think was much later. I don't have -- I don't have the knowledge. I don't have the knowledge of when the TRO was put in place.

Q Okay. (Pause.) Okay. We talked earlier about how you interfered with Mr. Seery's trading activities around Thanksgiving. Do you remember that?

A Yes, I do. I do remember the trading then, also.

Q Okay. And do you remember that just before Christmas you interfered with Mr. Seery's tradings again?

A Yes.

Q Okay.

MR. MORRIS: If we can call up Exhibit K from Docket No. 46, which I have shared with counsel?

THE WITNESS: You know what?

BY MR. MORRIS:

Q Yeah.

A Let's handle these each incident one at a time. And I don't want to use the word "interfering" or accept the word "interfering" as an answer because I think my participation in each situation was very different.

MR. MORRIS: All right. Can we scroll down?

BY MR. MORRIS:

Q This is a letter that my firm wrote to Mr. Lynn. Mr. Lynn is your lawyer. Is that right?

A Yes.

MR. MORRIS: And if we could start down at the first page. We've seen these letter before. A little further.

BY MR. MORRIS:

Q Do you see there is a reference there to the Debtor's management of CLOs?

A Yes.

Q And there is a recitation of the history that we talked about a bit earlier. If we -- if we look further in that paragraph to around Thanksgiving, when you intervened to block the trades.

A Yes, I see that sentence.

Q Okay.

MR. MORRIS: And then if we can go to the next page, the next paragraph. Yeah, that's where.

BY MR. MORRIS:

Q Then we referred to the December 16th hearing, right? And then the next paragraph says, "On December 22, 2020" --

MR. MORRIS: Can you scroll down just a little bit? Nope, the other way. Yeah, right there.

BY MR. MORRIS:

Q "On December 22, 2020, employees of NPA and HCMFA" -- those are the Advisors, right?

A Yes.
Q -- "notified the Debtor that they would not settle the CLO's sale of the AVYA and SKY security." Have I read that correctly?
A Yes.
Q All right. On or about December 22nd, you personally instructed employees of the Advisors not to trade the SKY and AVYA securities that Mr. Seery had authorized. Is that right?
A No.
Q You personally instructed, on or about December 22, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY and AVYA, right?
A No. You know, we need to look at source documents. My recollection is I encouraged Compliance to look at those trades. But I'm willing to be -- I'm willing to be -- get source documents again, if you'd like.
Q All right. My source document is your prior testimony.
MR. MORRIS: Can we please call up Exhibit NNNN at Page 73? Beginning at Line 2? Okay.
BY MR. MORRIS:
Q Page 73, beginning at Line 2, did you give the following answer to my question?
"Q And you personally instructed, on or about December 22nd, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized

with respect to SKY and AVYA, right?

"A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle the trades that occurred, but that's a different ball of wax."

Q Did you give that answer, sir?

A I believe I confused dates or misspoke there, but I did give that answer.

Q Okay. Thank you. Stated a different way, you personally instructed the Advisors' employees not to execute the trades that Mr. Seery had authorized but which had not yet been made, right?

A No. Not -- not on December 22nd. That was in November. November 22nd, I did not do that.

Q Okay.

MR. MORRIS: Can we go to Page 76, please? Line 15.

BY MR. MORRIS:

Q Did you give this answer to my question?

"Q And you would agree with me, would you not, that you instructed the employees of the Advisors not to execute the very trades that Mr. Seery identifies in this email, correct?

"A Yes."

Q Did you give that answer, sir?

A Well, like I said, I -- I confused the Thanksgiving

trades, the week of Thanksgiving, with my more nuanced responses to later trades.

MR. MORRIS: I move to strike, Your Honor. It's a very simple question.

THE COURT: Granted.

BY MR. MORRIS:

Q Did you give that answer to my question, sir?

A I -- yes, I did.

Q Thank you. Now, all of this is just a week after that December 16th hearing, right?

A Yes.

Q And right after that hearing, the K&L Gates firm sent, on behalf of the Defendants, more letters to the Debtors, right?

A Yes.

MR. MORRIS: Can we please pull up the first letter? It's Exhibit DDDD. And if we can go not to our response but to the original letter that was sent that's attached to this. I think it is Exhibit A. Right there.

BY MR. MORRIS:

Q That's the first of the letters, December 22, 2020. Do you see that?

A Yes.

MR. MORRIS: And can we scroll down to the end of the letter to see what the request is here? Right there.

BY MR. MORRIS:

Q Can you read the end of that letter right there, sir?
A (reading) Sincerely, A. Lee Hogewood, III.
Q Nice. I meant the actual substance.
A (reading) For the foregoing and other reasons, we request that no further CLO transactions occur, at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing.
Q Okay. And that's similar in substance to the letter that was sent on behalf of the Defendants on October 16th that you saw and approved, right?
A I did not see and approve.
Q All right. The record will speak for itself. And it's similar in substance to the letter that was sent on November 24th by the K&L Gates clients on behalf of the Defendants, right?
A I don't know.
Q We looked at it before. Should we get it again?
A It's a -- all the letters, as far as I understand, were similar in requesting that the -- the beneficial owners of the CLOs were requesting that no wholesale liquidation of their assets occur. That's how I understand it.
Q And that's --
A You asked my understanding. That's my understanding.
Q Okay. And notwithstanding the request in this letter, when you were -- when you were talking to the traders at your

shop, you actually told them that the Debtor was instructed not to do these trades, right?

A Are you parsing "instructed" versus "requested"? I don't understand the question.

Q I am, in fact. You used a very different phrase when speaking to your employees than you did -- then your lawyers did when they wrote to the Debtor, right?

A It seems to be a difference, yes.

Q Okay. So, this is on December 22nd. Now, the night before, you participated in a meeting with Grant Scott and with the lawyers for the Defendants, right, to talk about what you guys were going to do with respect to the Debtor's management of the CLOs. Isn't that right?

A I don't remember specifically.

Q Okay. But is it fair to say it's true, is it not, that during the week leading up to Christmas you participated in several phone calls with the K&L Gates firm and with other members of the Defendants' -- the Advisors, Mr. Sowin or Mr. Post or Mr. Sauter, and the lawyers, right? You were all together talking about these issues during the week before Christmas, right?

MR. RUKAVINA: Your Honor, I'm going to object. If counsel is asking what was discussed with counsel present for the purpose of legal advice, that is an inappropriate question.

THE COURT: Okay.

MR. MORRIS: I'm certainly not. I'm asking if the conversations took place.

MR. RUKAVINA: And the conversations -- the question was, did they discuss what to do with respect to the CLOs? That would be privileged, Your Honor. If they discussed football, that's not privileged, but what to do with the CLO management agreements is privileged.

THE COURT: Okay. I sustain.

MR. MORRIS: Can we please call up Exhibit TT? I'm sorry, TTT. Nope, TTTT. TTTT. Can you scroll down a bit? Right there.

BY MR. MORRIS:

Q Do you see -- this is an email from Grant Scott to Scott Ellington; do you see that?

A Yes.

Q And at this point, Mr. Ellington is still working for the Debtor, right?

A Yes. I believe he was settlement counsel.

Q Uh-huh. And do you see that this is an email that refers to your availability for a 9:00 a.m. call?

A Yes.

Q And do you see that there's a question as to whether the K&L people can make it?

A Yes.

Q And you understand that refers to K&L Gates, right?
A I -- I guess so.
Q And so does this refresh your recollection that at or around Christmas, or in the days leading up to Christmas, you participated in calls with Mr. Scott, with Scott Ellington, and with the K&L Gates folks?
A I -- I don't know. I don't know if -- if I actually did or not. But I was highly concerned with inappropriate behavior.
Q And you were available -- and did you tell somebody that you were available for this call on the morning of the 23rd?
A I don't know.
Q This is the day after you stopped the trades, right?
A Again, I didn't stop the trades on the 23rd.
Q You stopped them on the 22nd, right?
A No, I stopped them on the week of Thanksgiving.
MR. MORRIS: Can we go back to Exhibit NNNN, the transcript? Page 73?
BY MR. MORRIS:
Q Let me see if I can refresh your recollection. Tab 2. Did you give this answer to this question:
"Q And you personally instructed, on or about December 22, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY and AVYA, right?

"A Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them."

Q Did you give that answer to the question?

A Yes.

Q Okay.

A But we -- we corrected.

Q All right. You didn't correct it at the preliminary injunction hearing, did you?

A No, I did not.

Q Okay. So as far as the Court knows as of this moment, that's the only testimony that you've ever given on the topic, right?

A I'm trying to give some now.

Q Okay. And on December 22nd, that's the date that the first letter was also sent, right, we just looked at?

A All right. Okay.

Q You agree with that, right?

A I don't remember the date on the letter. If you want to pull it up, I'll say it is the 22nd or the 23rd, whatever it says. I don't know.

Q Sure.

MR. MORRIS: Let's go back to DDDD, please. And if we can just go to the top of the letter. Thank you.

BY MR. MORRIS:

Q K&L Gates. December 22nd. That's the letter, right?

A Yes.
Q And according to the testimony that you gave at the preliminary injunction hearing on January 8th, that's the day that you also stopped AVYA and SKY trades, right?
A I'm not agreeing to that testimony. I am changing the testimony.
Q Okay. And then we just saw that other exhibit where they were trying to arrange a phone call with you, the K&L Gates lawyers, and Mr. Ellington and Grant Scott for the 23rd. Do you remember that one we just looked at?
A Yes.
Q And then later on the day on the 23rd, K&L Gates sends another letter, right?
MR. MORRIS: Can we call up EEEE? And can we scroll to the Exhibit A, to our response? Right there.
BY MR. MORRIS:
Q That's the 23rd. Do you see that letter?
A Yes.
Q Again, this is one week after the hearing, right?
A Yes.
Q Okay. And this is a letter where K&L Gates states on behalf of the Defendants that they are contemplating taking steps to terminate the CLO management agreements, right?
A I don't know. Can you scroll down, if you want to ask me --

Q Sure.

MR. MORRIS: Can we flip to the next page, please? Keep going. Right there.

BY MR. MORRIS:

Q Can you read the first sentence of the paragraph beginning, "Consequently"?

A (reading) Consequently, in addition to our request of yesterday, where appropriate and consistent with the underlying contractual provisions, one or more of the entities above intend to notify the relevant Trustees and/or Issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference to the applicable provisions of the United States Bankruptcy Code, including the automatic stay of Section 362.

Q Okay. So, on December 23rd, the Defendants told the Debtor that they intended to notify the relevant Trustees and/or the Issuers that the process of removing the Debtor as the fund manager should be initiated, right?

A That's what it says.

Q And then the K&L Gates firm sent yet another letter to the Debtor, right? Do you remember that?

A No.

MR. MORRIS: Can we get up FFFF, please?

BY MR. MORRIS:

Q This is dated December 31st. Do you see that?

A Yes.

MR. MORRIS: Can we scroll down a bit?

BY MR. MORRIS:

Q Do you recall this is the letter where they claim that they've been damaged by the Debtor's eviction of you from the Highland offices?

A I don't remember specifically, but that's true.

Q Okay. So we just saw these three letters, in addition to your -- the -- at least the testimony you gave regarding your conduct on the 22nd of December. You were aware that all of these letters were being sent by K&L Gates, correct?

A Yes, generally.

Q And you were supportive of the sending of these letters, right?

A Absolutely. They were appropriate.

Q And you pushed and encouraged the chief compliance officer and the general counsel to send these letters, right?

A I'd like to think that they believed and they acted largely on their own judgment, but I strongly believed it was a violation of the Advisers Act, and stated that numerous times.

Q Sir, you pushed and encouraged the chief compliance officer and the general counsel to send these letters, correct?

A No, I wouldn't use those words.

Q Do you understand that the Debtor demanded that the K&L Gates clients or the Defendants withdraw these letters?
A I believe they requested it. I didn't -- I didn't know the former, what you mean by demand, but --
Q Well, it's fair to say you never instructed the K&L Gates clients or the Defendants to withdraw these letters, right?
A No. I still believe they are appropriate and accurate. I wouldn't withdraw them today.
Q Okay. Sir, throughout 2020, when you were still the portfolio manager at Highland Capital Management, it's true that you sold AVYA shares on numerous occasions on behalf of both the CLOs and on behalf of the Funds outside of the holdings of the CLOs?
A Always with a business purpose, yes. That is still a small percentage of our total AVYA holdings, and we still liked AVYA.
Q Sir, I'm going to ask you just one more time. In 2020, you sold AVYA stock many times on behalf of the CLOs and on behalf of the Funds?
A Yes.
Q Thank you.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Mr. Rukavina?
MR. RUKAVINA: Your Honor, I will reserve my questions to my case in chief, and I would request a very

short restroom break.

THE COURT: All right. Mr. Dondero, we're --

MR. RUKAVINA: And I do mean short. I will --

THE COURT: I'm sorry. What?

MR. RUKAVINA: And I do mean short, Your Honor. I just need to run and be back -- I can be back in three minutes.

MR. MORRIS: No problem, Your Honor.

THE COURT: Okay. You're finished for now, Mr. Dondero, but you're going to be recalled, so hang tight.

Your next witness, Mr. Morris?

MR. MORRIS: The Debtor calls Jason Post.

MR. RUKAVINA: Your Honor, may I be excused to run to the restroom and Mr. Vasek take over for a few minutes?

THE COURT: Oh. Okay. I'm sorry. If you made that request, I didn't hear you. So that's fine.

All right. Mr. Post, --

MR. MORRIS: Your Honor, can we just -- I apologize for interrupting. Can we just direct Mr. Dondero not to speak with anybody about anything at any time? Not by phone, not by text, not by email, not by meeting, not by anything? Because he's still on the stand.

MR. RUKAVINA: Well, Your Honor, anything at any time. I think I know that Mr. Morris is being facetious, but if he's trying to get the rule invoked, that's different.

MR. MORRIS: Okay. I'm trying to get the rule invoked.

THE COURT: Okay. All right. I'm not going to make that instruction. All right. So, --

MR. RUKAVINA: I've got to run to the restroom. I'll be -- listen for the instructions.

THE COURT: Jason Post, you've been called to the witness stand. Could you say, "Testing, one, two"?

MR. POST: (Indiscernible.)

THE COURT: All right. Please raise --

MR. POST: Testing, one, two.

THE COURT: Thank you. Please raise your right hand.

JASON POST, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Mr. Morris, go ahead.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Post. We met the other day. Do you remember that?

A I do.

Q Okay. So, again, just to remind you, my name is John Morris. I'm an attorney at Pachulski, Stang, Ziehl & Jones. We represent the Debtor here. You're the chief compliance officer for each of the Defendants; is that right?

A I am.

Q And in your role as the chief compliance officer, your job

is to act as a liaison between regulatory bodies and internal working groups with respect to the rules and regulations for the funds advised by the Advisors; is that correct?

A Correct, that's -- that's the (inaudible). Correct.

Q All right. And internally, you report to Mr. Dondero. Isn't that right?

A Correct.

Q And you've been working with Mr. Dondero since 2008 when you joined Highland Capital Management, correct?

A I worked at Mr. Dondero's firm since 2008, but I reported to other direct reports during that time outside of Mr. Dondero. I started to report to him directly in October of 2020.

Q Okay.

A (overspoken)

Q But you've -- you've worked at Highland -- you worked at Highland since 2008, fair?

A Yes.

Q Okay. And you were employed by Highland up until October 2020, correct?

A Yes.

Q Okay. And at that time, Mr. Dondero left and he went to NexPoint and you went to NexPoint. Is that right?

A Shortly after Mr. Dondero left Highland, I transitioned over to NexPoint.

Q And that's where Mr. Dondero is, right?
A Correct.
Q Okay. You joined Highland in 2008, and in around 2011 you joined Highland's internal legal and compliance team, correct?
A That's correct.
Q And in 2015, while still employed by Highland, Mr. Dondero appointed you as the chief compliance officer of the Advisors and the Funds, right?
A Technically, the retail board appointed me the CCO of the Funds, and then I was appointed internally. I believe Mr. Dondero was part of that decision for the Advisors.
Q Had you ever worked with the retail boards before that?
A There was about -- I worked with them for about a year prior to that.
Q Okay. And you've served as the CCO, the chief compliance officer, of each of the Advisors and each of the Funds since September 2015 on a continuous basis, right?
A That is correct.
Q You know Thomas Surgent; is that right?
A I do.
Q Mr. Surgent has been the Debtor's chief compliance officer since around 2013 or 2014; is that right?
A I believe -- uh -- I -- I think that's correct. It may be a year or two off. He took the role after the former CO resigned, which I don't know if that was 2011 or 2012. I

can't recall specifically.

Q Okay. But he's been -- he's been in that position for a long time, right? Fair enough?

A Yes, that's fair.

Q And during the whole time that you were employed by Highland and serving as the chief compliance officer for the Funds and the Advisors, you reported to Mr. Surgent?

A Internally. Yes, that's correct.

Q Yeah. And you respect Mr. Surgent; isn't that right?

A During the time I reported to him, yes.

Q Yeah. And you believed that he did his job well, right?

A As far as I could see, yes.

Q You viewed it as -- you viewed him as a mentor, did you not?

A Yes. I mean, when I joined the legal compliance team, you know, he was there. He was a senior member on the team. And he, you know, helped educate me, along with other, you know, external sources, et cetera, on the compliance function.

Q Uh-huh. He trained you for the work you're doing now, right?

A With respect to the on-the-job training, yes.

Q Uh-huh. Despite all of that, throughout all the proceedings, the court hearings, all of the issues that we're talking about in this case, you never, ever stopped to discuss any of these issues with your former mentor, Mr. Surgent; is

that right?
A The -- with respect to, for example, the trade (garbled) that you were talking about earlier?
Q Let's do it this way. From the time that you left Highland until today, you've never discussed with Mr. Surgent Mr. Seery's trades; is that right?
A I believe there was a discussion after -- I can't recall exactly the context. There was a discussion after the trades in the November time frame. And then I believe there was a -- I responded to an email exchange in the December time frame regarding booking of the trades.
Q Sir, you -- you've never spoken with Mr. Surgent about any issue concerning the Debtor's management of the CLOs, correct?
A I don't recall directly, no.
Q In fact, you're not aware of anyone acting on behalf of the Advisors or the Funds who has reached out to Mr. Surgent to get his views on any of the issues related to this motion. Isn't that right?
A I believe previously there's correspondence that Mr. Dondero had with Surgent. But aside from that, I'm not aware of any.
Q Is that the email where he reminded him of his personal liability? Is that the one you're thinking of?
A Correct.
Q Yeah. Do you know of any other communication -- do you

know of any other communication that any of the Defendants had with Mr. Surgent concerning the Debtor's management of the CLOs?

A With Mr. Surgent directly, I don't -- I don't -- I don't believe so.

Q Yeah. You graduated from Baylor; is that right?

A Correct.

Q But you don't have any certifications or licenses applicable to your work, correct?

A Correct.

Q You don't have any specialized training or education that's relevant to your work as a chief compliance officer, correct?

A Correct.

Q Your job -- your training is limited to on-the-job training; isn't that right?

A That is correct.

Q You've never spoken at any conferences on compliance matters, have you?

A Spoken, no. Attended, yes.

Q You don't recall presenting any papers at any compliance-related conferences, do you?

A That is correct.

Q You've never published anything in connection with your work as a compliance officer; isn't that right?

A Not that I can recall.
Q Let's talk about the CLO management agreements briefly. You're aware that the Debtor is party to certain management agreements pursuant to which it serves as the portfolio manager for certain CLOs, correct?
A Correct.
Q And until your lawyers recently asked you to review them, you last had reason to review a CLO management agreement about five or six years ago; isn't that right?
A I believe that's correct.
Q And the request from your lawyers to look at the CLO management agreements, that request came in late November/ early December; isn't that right?
A I believe that's around the right time frame.
Q And the portions of the management agreements that you read were the portions that your counsel asked you to read; isn't that right?
A Correct.
Q And other than the general recollection of having read something about the rights of preference shareholders, you don't recall much about the agreements at all; isn't that right?
A I mean, the agreements are very lengthy in nature. You know, I think it was probably rights that the preference shareholders had, and, you know, possibly indemnification

provisions. But aside from that, I don't recall anything else specifically right now.

Q As the chief compliance officer of the Advisors and the Funds, you don't know whether any of them are party to the CLO management agreements between the Debtors and -- between the Debtor and the Issuers, correct?

MR. RUKAVINA: And Your Honor, I would just object to the extent that that calls for a legal conclusion. This witness is not a lawyer.

THE COURT: Overruled.

THE WITNESS: I'm sorry. Can you repeat the question, please?

BY MR. MORRIS:

Q Sure. As the chief compliance officer for each of the Defendants, you don't know whether any of them are party to the CLO management agreements between the Debtor and the Issuers, correct?

A They're not the named collateral manager, but they're a security holder of the CLOs, so they should be entitled to, you know, the rights that those security holders are afforded under those agreements.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Granted.

BY MR. MORRIS:

Q All right. So, now, Mr. Post, I know this is difficult,

and I do appreciate that it's difficult just to focus on the question. Your counsel will have the opportunity to ask you whatever he wants. But I would respectfully request that you listen to my question and only answer my question. It really is very likely to require just a yes or no answer.

So, let me try again. As the chief compliance officer of the Advisors and the Funds, you don't know whether any of them are a party to the CLO management agreements between the Debtor and the Issuers, correct?

A I don't believe they are, correct.

Q Okay. Let's talk about that prior hearing. Now, by the way, Mr. Post, did you listen in to Mr. Dondero's testimony earlier?

MR. RUKAVINA: Mr. Post was here with me --

MR. MORRIS: Yeah.

MR. RUKAVINA: -- as my representative..

MR. MORRIS: Okay. I -- there's no problem. I just -- I just -- that way there's some background and he has some context. That's the only reason I asked.

BY MR. MORRIS:

Q You're aware that the Funds and the Advisors previously filed a motion in the Bankruptcy Court asking the Court to institute a pause in the Debtor's ability to sell CLO assets, correct?

A Correct.

Q And you recall that that happened in mid-December, around December 16th; is that right?
A That sounds correct.
Q And in connection with that motion, you provided information to counsel that they requested from you, right?
A Yes. I was part of the working -- internal working group, with internal and external counsel.
Q Other than providing that information, you generally agreed with the position being taken that it wasn't in the best interest of the Funds involved for Highland to make any trades; isn't that right?
A Yes. And that was based off of discussions with the investment professionals.
Q And the investment professionals are Mr. Sowin and Mr. Dondero, correct?
A Correct.
Q Okay. So you're the chief compliance officer, and they made a motion that was based on the idea that the fund manager, Highland Capital Management, shouldn't trade any assets in the CLOs. Do I have that right?
A I believe that's what the motion contained.
Q But you don't even remember who authorized the filing of the motion; isn't that right?
A I believe it was pursuant to discussions internally and with external counsel, and I believe Mr. Norris signed the

filing, if I -- if I recall correctly.

Q Sir, you don't remember who authorized the filing of the motion, correct?

A It -- it was pursuant to a discussion with the investment professionals and counsel, and it was in the best interest of the Funds to make the filing. So I think it was a collaborative determination.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Granted.

MR. MORRIS: Ms. Canty, can we please pull up Mr. Post's deposition transcript? And let's go to Page 35. Line 21. Okay.

BY MR. MORRIS:

Q Do you remember giving the following answer to the following question:

"Q Who authorized the filing of this motion?

"A I can't recall specifically who authorized it."

Q Did you give that answer to my question just the other day?

A That's -- that's what it says there, yes.

Q And it says that because that's, in fact, what you testified to under oath the other day, right?

A Correct.

Q Okay. And the one thing that you know for certain is that you didn't authorize the filing of the motion; isn't that

right?
A I didn't sign anything in connection with the filing.
Q All right. Listen carefully to my question. The one thing that you're certain of is that you did not authorize the filing of the motion as the chief compliance officer of the Debtors, correct?
A Correct.
Q Okay. But you did participate in conversations with Mr. Dondero and counsel concerning the motion; is that fair?
A There were conversations with Mr. Dondero initially, and then the conversations were then more so with internal and external counsel in terms of the filing.
Q Okay. So they started just with Mr. Dondero, and then they moved on to counsel. Is that what you're saying?
A I can't recall specifically. It may have been part of a discussion internally with internal counsel and Mr. Dondero. I just -- I can't recall the specifics.
Q Okay. But Mr. Dondero certainly supported the filing of the motion, right?
A Yes. From an investment perspective, it was in the best interest of the Funds in terms of the sales that were occurring.
Q Okay.
MR. MORRIS: I move to strike.
THE COURT: Granted.

BY MR. MORRIS:

Q It's a very simple question. Mr. Dondero supported the filing of the motion; is that correct?

A Yes.

Q You did not file a declaration in support of the motion; is that correct?

A Me personally, no.

Q Okay. So you're the chief compliance officer of the Defendants; is that right?

A Correct.

Q But instead of you filing a declaration, Mr. Norris filed the declaration. Do I have that right?

A Correct. My understanding is one person needs to sign the declaration.

Q And remind me, what is Mr. Norris's position? He's the executive vice president, right?

A Correct.

Q What responsibilities does he have? Does he have trading responsibility?

A He does not.

Q Does he have compliance responsibility?

A Not directly, no.

Q Does he have investment responsibility?

A He's familiar with the composition of the portfolios in his role as a product strategy team member.

Q Does he have investment responsibility, sir?
A He is not making direct investments for the -- for the Funds.
Q Okay. So he doesn't -- and he's not a compliance person, right?
A Correct.
Q And he's not a lawyer, right?
A Correct.
Q But nevertheless, as the chief compliance officer, you believed that Mr. Norris's declaration contained all of the information that was relevant to support the motion, right?
A It was a determin... or a collaborative determination in conjunction with counsel. But I, you know, I don't -- yeah, it was -- it was a collaborative determination. There were multiple elements that went into that -- the letter.
Q Okay. You believed that the motion and Mr. Norris's declaration contained all the relevant facts that supported the Advisors and the Funds' requests to the Court, correct?
A Yes.
Q In fact, you believed that Mr. Norris was the most knowledgeable person to testify on behalf of the Movants; isn't that right?
A I think it was -- he was identified pursuant to discussions with counsel to be the most knowledgeable.
Q I'm going to ask you just about you and not counsel. You

believed at the time that Mr. Norris was the most knowledgeable witness to testify on behalf of the Movants; isn't that right?

A Yes.

Q And you didn't testify -- not only didn't you submit a declaration, but you didn't testify at the hearing, did you?

A Correct on both.

Q Okay. And you listened to parts of the hearing, but not all of it, because you were busy doing other stuff, right?

A Correct.

Q You didn't listen to Mr. Norris's testimony at all, right?

A I don't believe I did.

Q You didn't listen to the Court when the Court rendered its decision, did you?

A I don't -- I don't believe I did.

Q And you didn't read the transcript from the hearing, did you?

A I don't -- correct. I did not.

Q Okay. So in your capacity as the chief compliance officer, you didn't believe that you should take the time to review the transcript, did you?

A Correct. I mean, just it was filed based off of the belief that the -- that the trades weren't in the best interest, and I -- and no, I didn't read it personally.

Q And you didn't believe, in -- that in your capacity as the

CCO, the chief compliance officer, that it was in the scope of your responsibility to listen to the hearing, correct?

A I was -- I wasn't asked to listen, and quite frankly, I don't -- I don't recall if I remember the timing, but I did not listen.

Q Okay. And in your capacity as the chief compliance officer, you didn't believe that it was in the scope of your responsibilities to listen to the hearing; isn't that right?

A Correct.

Q And because you didn't listen to the hearing or review the transcript, you were unaware of what the Court said or how Judge Jernigan described the motion or the people involved in presenting the case on behalf of the Defendants, right?

A Correct, but I -- I believe I probably would have received some guidance from counsel who attended or listened to the hearing.

Q Well, after the hearing was over, you did speak to Mr. Norris, right?

A Very briefly.

Q In fact, --

A Very --

Q In fact, the only thing you can remember about your conversation with Mr. Norris following the hearing was discussing with him how long the hearing took. Isn't that right?

A Correct, because I -- I believe I heard it was a short hearing.

Q And that's -- that's all -- that's all you asked Mr. Norris about, about the hearing, right? That's all you remember talking to him about?

A I believe so, correct.

Q You don't recall discussing with Mr. Norris any other aspect of the hearing other than the length of time it took to conduct, correct?

A I don't recall specifically.

Q And you have no recollection of ever discussing with Mr. Dondero what happened at the hearing, right?

A I don't think I talked with Jim, Jim Dondero about that.

Q Nor did you talk to Mr. Dondero about the Court's ruling; isn't that right?

A Correct.

Q Okay. Let's talk about the events that occurred after the hearing, in the two weeks following the hearing. The Defendants for which you serve as the chief compliance officer sent three separate letters to the Defendant [sic], correct?

A If you could bring them up, I can confirm.

Q Sure.

MR. MORRIS: Let's start with DDDD, please. Okay. Okay. Can we scroll to the attachment, please?

BY MR. MORRIS:

Q All right. So this is the first letter, Mr. Post. Do you recall, on or about December 22nd, the K&L Gates firm sent, on behalf of the Advisors and Funds for which you serve as the chief compliance officer, a letter to the Debtors?

A Yes.

Q Okay.

MR. MORRIS: And can we call the next exhibit? I guess it's EEEE.

And I don't mean to be quick about these. If there's any reason that you want to read them, I wasn't planning on asking any questions about the substance of the letters of this witness.

BY MR. MORRIS:

Q But Mr. Post, I don't mean to be quick here. So if you think there's a benefit to you to reading the letters, please let me know.

Do you see, December 23rd, the next day, another letter was sent by K&L Gates?

A Yes.

Q Okay. And do you recall generally that the Advisors and Funds for which you serve as chief compliance officer told the -- told the Debtor that they were going to begin the process of seeking to terminate the CLO management agreements?

A I believe -- I believe that was contained in the letter, so long as it was done in compliance with the Court.

Q Uh-huh. And do you remember there was a third letter that was sent?

A If you wouldn't mind pulling it up.

Q Yeah, not at all.

MR. MORRIS: Can we get the December 31st letter? I think it might be -- yeah.

BY MR. MORRIS:

Q Now, here's the December 31st letter. Do you remember the December 31st letter was the one where K&L Gates suggested that the Advisors and the Funds had suffered damages because the Debtor evicted Mr. Dondero from the Highland suite of offices?

A I -- I had heard of that letter being drafted, but I don't recall -- I obviously don't recall a specific date. But if it says December 31st, --

Q Okay. Mr. Dondero was one of the main voices in the decision to send these letters, correct?

A He was part of the preliminary conversation and expressed his opinion, and then myself and others internally, and with external counsel, then worked to draft the letters.

THE COURT: All right. Mr. Post, I am going to interject. I have heard Mr. Morris give you this instruction many times. Maybe it's time for me to. Maybe it's past time for me to.

Most of his questions simply require a yes or no answer.

If you feel like there are other things that you want to supplement your testimony with, Mr. Rukavina is going to have a chance to question you, and that would be the situation where maybe you could give more fulsome answers. But please listen to the question. If it's a yes or no answer, that's all we want you to give right now. Okay? Got it?

THE WITNESS: Understood.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

BY MR. MORRIS:

Q Mr. Post, Mr. Dondero was one of the main voices in the decision to send the letters; isn't that correct?

A He was a voice.

THE COURT: That was not a yes --

BY MR. MORRIS:

A And he was -- he --

THE COURT: Okay.

THE WITNESS: I'm --

THE COURT: Please, just a yes or no answer, okay?

THE WITNESS: No.

MR. MORRIS: Okay. Can we go to Mr. Post's transcript, please, Page 47? Line 22?

And Your Honor, when we pull it up on the screen, there is an objection, and I would respectfully request that the Court rule on the objection before I read the question and the

answer.

THE COURT: All right.

MR. MORRIS: So if we could just call up Page 47 beginning at Line 22.

MR. RUKAVINA: Page 47, Line 22.

THE COURT: Okay.

MR. MORRIS: One moment. Give her a moment. She's not there.

MR. RUKAVINA: Do you remember what exhibit this is?

MR. MORRIS: Yeah. There it is. Beginning at Line 22, "Do you know?" And there is Mr. Rukavina's objection.

MR. RUKAVINA: Your Honor, it's very simple. He can't go into Mr. Dondero's head. But he -- but if Mr. Dondero told him something, that's different. So I think counsel can rephrase the question and it's perfectly fine, but he can't go into Mr. Dondero's state of mind.

MR. MORRIS: Your Honor, I'm not asking for Mr. Dondero's state of mind. I'm asking for Mr. Post's knowledge. "Do you know?"

THE COURT: Okay. I'll overrule the objection. He can answer.

BY MR. MORRIS:

Q All right. So, Mr. Post, do you remember giving this answer to the following question:

"Q Do you know whether Mr. Dondero supported the

sending of each of these three letters?

"A I don't -- I don't recall specifically. I think he had his views on certain of the transactions that were occurring, and he wasn't in agreement with those transactions, as one of the main voices."

Q Do you see that?

A I do.

Q Does that refresh your recollection that Mr. -- that you testified that Mr. Dondero was one of the main voices?

A Yes.

Q Okay. Mr. Dondero --

MR. MORRIS: You can take that down now for the moment, please.

BY MR. MORRIS:

Q Mr. Dondero had his views on certain of the transactions that were occurring, and he wasn't in agreement with those transactions. Isn't that right?

A Yes.

Q All right. Going back to the letters that we just looked at quickly, you recall the Debtor responded to each of those letters, but as the chief compliance officer, you couldn't really recall what the Debtor said in response. Is that fair?

A I'm -- I believe they -- I'm sorry. I can't recall specifically without seeing the letters.

Q Okay. So you don't recall that, in response, the Debtor

requested that the Advisors and the Funds withdraw the letters, right?

A I believe that was requested in the letters.

Q Okay. But the Funds and the Advisors didn't comply with that request, right?

A To my knowledge, they have not withdrawn the letters.

Q You do recall that the Debtor specifically asked the Defendants to file their lift stay motion so that they could finally resolve the issue of whether or not the Advisors and the Funds could actually terminate the agreement, right?

A I -- I'm sorry. Can you repeat that question, please?

Q Do you recall that the Funds and the Advisors informed the Debtor that they were going to initiate steps to terminate the CLO management agreements, including moving to lift the stay?

A I think they indicated that they were going to take steps, but it would be pursuant to what was permitted in the court.

Q And do you remember that the Debtor specifically asked the Defendants to do exactly that, to bring this matter to a conclusion, to file the motion so that the Court could resolve the issue of whether or not they had a right to terminate the agreement? You remember that, right?

MR. RUKAVINA: Objection, compound, Your Honor.

THE WITNESS: I can't --

THE COURT: I'm sorry.

MR. MORRIS: I can't recall.

THE COURT: Was there an objection?

MR. RUKAVINA: Yes, Your Honor. That's four questions in one. That's compound.

MR. MORRIS: I'll rephrase, Your Honor.

THE COURT: Okay. And let me interject a minute. Mr. Post, you have this habit of not looking squarely at the camera but looking over to your right. And in a normal courtroom setting, that might be fine, but I have no way of knowing if some lawyer or some other person is -- you're looking at them and they're somehow instructing you. I would certainly hope that's not what's going on, but it just kind of leaves room for me to wonder when you're not looking squarely at the camera. So can you start looking squarely at the camera, please?

MR. RUKAVINA: Your Honor, I can explain that, and certainly there's no funny business going on. There are two cameras on Mr. Post. One is on a laptop. We're looking at the Court on the big camera. I'm sitting behind Mr. Post. So if the Court would prefer that Mr. Post look directly into the laptop, then that's what he'll do, or if the Court would prefer that he look into the big camera.

THE COURT: Okay. Well, I prefer he look into the big camera just because it --

MR. RUKAVINA: So keep looking there? Yeah.

THE COURT: No, no, no, no. Okay. I don't know what

-- I thought -- okay. Do you see what I'm seeing? I don't know if you can see what I'm seeing.

MR. MORRIS: Yes.

THE COURT: I'm seeing the left side of his face.

THE WITNESS: I'm sorry. I'll just look at the laptop. Sorry. I was -- I was looking at who was speaking to me.

THE COURT: Okay. Well, I don't --

MR. MORRIS: Okay.

THE COURT: I don't know the setup, so it was confusing to me.

All right. This is better. Thank you.

THE WITNESS: Yeah. I apologize.

MR. RUKAVINA: We'll focus on the laptop, Judge.

BY MR. MORRIS:

Q All right. So the question, Mr. Post, is: You do recall that the Debtor specifically asked the Defendants to file their motion to lift the stay so that the issue could finally be resolved; isn't that right?

A I can't recall that specifically.

Q You believe that may be one of the options that the Debtor specifically proposed, right?

A It -- yes.

Q Okay. But the Defendants never filed their lift stay motion to terminate the agreements; isn't that right?

A I don't believe so.
Q Right. So the Debtor filed its complaint and its request for the injunction, right?
A Correct.
Q As the CO -- as the CCO, you may have reviewed the Debtor's complaint and motion, but you can't recall, given all the documentation that's involved, right?
A Correct.
Q You can't recall any facts that the Debtor asserted in support of its motion; isn't that right?
A I can't recall specifically. Correct.
Q But the one thing you do know is that the Debtor's motion is based on its entitlement to transact business pursuant to their arrangement with the CLOs as collateral manager, correct?
A Yes.
Q Now, you heard that there was supposed to be an initial hearing on the Debtor's motion for a temporary restraining order against the Defendants, right?
A Correct.
Q But you don't believe the motion for the TRO got heard, and you presume it got resolved, right?
A I don't believe it was heard.
Q Okay. And you understand that there is a TRO in place now, pursuant to which the Advisors and the Funds are

prevented from interfering with the Debtor's execution of its rights under the CLO management agreements, right?

A Correct.

Q Before the TRO was resolved, you weren't personally involved in the process of deciding what witnesses would be called and what exhibits would be offered into evidence; is that right?

A No.

MR. MORRIS: During the deposition, Your Honor, subject to correction from Mr. Rukavina, I believe that the Defendants and the Debtor reached the following two stipulations.

First, the Defendants and the Debtor stipulate that Mr. Post was not going to be called as a witness at the TRO hearing.

MR. RUKAVINA: That is correct.

MR. MORRIS: And second, the Defendants and the Debtor stipulate that the Defendants were not going to offer into evidence any exhibits other than those specifically listed on their witness and exhibit list.

MR. RUKAVINA: That being the witness and exhibit list filed before the TRO. That is correct.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Let's talk about Mr. Seery for a minute. You know who Mr.

Seery is, correct?

A Correct.

Q You understand he's an independent director and the CEO of the Debtor, right?

A Correct.

Q And you also understand that his -- in his capacity as the Debtor's CEO, Mr. Seery is authorized to sell certain securities and assets that are owned by the CLOs, correct?

A Correct.

Q In your opinion as the CCO, the chief compliance officer of the Advisors and the Funds, Mr. Seery has the knowledge and experience to trade securities on behalf of the CLOs, correct?

A Correct.

Q But you don't believe that it's in the Funds' best interest for Mr. Seery to sell SKY and AVYA securities, right?

A Correct.

Q But even though you reached that decision about Mr. Seery, you have no knowledge as to whether Mr. Dondero ever traded either of those securities before he resigned from Highland; isn't that right?

A I saw some trades that were shown on the screen earlier. I don't think I recalled at the time I was asked on Friday.

Q As of the time -- as of Friday, you had no knowledge as to whether Mr. Dondero had traded in AVYA securities prior to his departure from Highland, correct?

A Correct.
Q And before, before forming your view as the chief compliance officer that Mr. Seery's trading of AVYA was not in the best interest of the Funds, you made no effort to see if Mr. Dondero had sold the exact same securities Mr. Seery was selling, correct?
A Correct.
Q And the sole source of information that you relied upon to reach your opinion that the trades weren't in the best interest of the Funds is Jim Dondero and Joe Sowin, correct?
A I'm sorry. Can you repeat that? You kind of cut out at the beginning.
Q Sure. And please, any time that happens, let me know. We had some problems this morning.
The sole source of information that you relied upon to reach your opinion that the trades weren't in the best interest of the funds is Jim Dondero and Joe Sowin; isn't that correct?
A Correct. They're the investment professionals, yes.
Q And you have no understanding as to why Mr. Seery wanted to sell the AVYA and SKY securities, do you?
A I was told that -- I don't know why he wanted to sell them personally, correct.
Q Okay. In fact, before reaching your conclusion as the CCO that Mr. Seery's trades were not in the best interest of the

Fund, you did not undertake any investigation of any kind to try to determine why Mr. Seery wanted to sell AVYA or SKY stock, correct?

A Correct. I didn't reach out to Mr. Seery.

Q All right. You believe that Mr. Dondero and Mr. Sowin's opinion that Mr. Seery's trades aren't in the Funds' best interest should be heard pursuant to the Advisers Act, right?

A Correct.

Q Specifically, Section 2000 -- 206 of the Advisers Act, right?

A Correct.

Q Have you ever read Section 206 of the Advisers Act?

A Yes.

Q Okay.

MR. MORRIS: Ms. Canty, can you please put up the demonstrative for Section 206 of the Advisers Act?

MR. RUKAVINA: Your Honor, the witness just asked me for water. Nothing more.

THE COURT: Okay.

MR. MORRIS: Yeah. No problem.

BY MR. MORRIS:

Q I've put on the screen Section 206 of the Advisers Act, Mr. Post. Can you please tell the Court what provision of 206 you believe Mr. Seery allegedly breached when he sought to sell AVYA and SKY securities?

A It would be Number 4.
Q Do you believe that Mr. Seery engaged in fraudulent, deceptive, or manipulative practices by trying to trade AVYA and SKY securities?
A The -- as collateral manager for the CLOs, they're supposed to maximize returns for the preference shares, which we didn't believe the sales reflected that, and so they weren't acting, --
THE COURT: Okay.
THE WITNESS: -- you know, pursuant to their duties --
THE COURT: Here I -- here I go --
THE WITNESS: -- under the collateral management --
THE COURT: Here I go again. Here you go again.
THE WITNESS: I'm sorry.
THE COURT: It really was a yes or no question. All right?
BY MR. MORRIS:
Q You're the -- you're the chief compliance officer, right?
A Yes.
Q And this is the provision in Section 4 that you cite to as the provision that Mr. Seery violated when he attempted to sell SKY and AVYA securities, correct?
A Yes.
Q Did Mr. Seery engage in an act, practice, or course of

business which was fraudulent when he looked to sell those securities?

A No.

Q Do you believe that Mr. Seery engaged in an act, a practice, or a course of business which was deceptive when he went to sell the SKY and the AVYA securities?

A Yes.

Q Who did he deceive?

A The investors of the CLOs, --

Q How?

A -- the preference shareholders.

Q How?

A By selling securities that the preference shareholder investors believed had further upside to them.

Q Did he lie to them?

A I don't believe he talked to the investors.

Q But you're putting your reputation on the line here and you're swearing under oath that Mr. Seery deceptively tried to sell SKY and AVYA securities?

A I believe that based off of a review and discussion with counsel.

Q Do you think he was manipulative?

A No.

Q Did you -- did you check in with the SEC to tell them that you had a bad actor here?

A No.
Q You first formed your view that the Debtor violated Section 206 of the Advisers Act after the sales started to occur in the CLOs, correct?
A Correct.
Q But you don't know when the sales actually started, right?
A I believe there were sales --
Q And I assume, since you were the chief compliance officer since 2015, you don't believe that Mr. Dondero's sale of AVYA stock was deceptive, right?
A You would have to ask Mr. Dondero that, but I believe he was selling for cash, cash needs for other funds.
MR. MORRIS: Okay. I move to strike. I'm asking him not --
THE COURT: Sustained.
BY MR. MORRIS:
Q I'm asking about you. I'm asking about you. You're the chief compliance officer, right?
A Yes.
Q And you don't believe that when Mr. Dondero sold AVYA stock that he was engaged in deceptive practices, do you?
A No.
Q And that's because you don't even know whether he sold AVYA stock; isn't that right?
A On Friday, I -- that is correct.

Q In fact, the only reason you learned that Mr. Seery wanted to sell AVYA and SKY stock is because Mr. Dondero told you; isn't that right?

A I believe I was forwarded the email after -- after there was communications on the sales.

Q And that's the email where Mr. Dondero told Mr. Surgent that he had personal liability, correct?

A I -- I believe it was an email prior to that about were trades being requested and Mr. Dondero responding.

Q You're familiar with the email where Mr. Dondero interfered with Mr. Seery's trades?

A Yes.

Q Okay. And you're aware that Mr. Dondero told Mr. Surgent that he faced potential liability if he continued to follow Mr. Seery's instructions, correct?

A Correct. Based off of Mr. Dondero's view.

Q Notwithstanding all of that, in your capacity as the chief compliance officer, you don't believe it's ever appropriate for an investor to step in and impede transactions that have been authorized by the portfolio manager unless the contract permits the investor to step in; isn't that right?

A I believe -- I'm sorry, can you repeat that, please? There was a lot of question.

Q Sure. Sure. In your capacity as the chief compliance officer, you don't believe it's ever appropriate for an

investor to step in and impede transactions that were authorized by the portfolio manager unless the contract permits the investor to do so; isn't that correct? Isn't that correct?

A Yes.

Q Okay. I know you're not a lawyer, but you are the chief compliance officer of the Funds; isn't that right?

A Correct.

Q And you can't point to anything in any contract that gives Mr. Dondero the right to step in and impede transactions that have been authorized by Mr. Seery; isn't that correct?

A He's entitled rights as preference shareholders for the -- for the Funds that hold those preference shareholders. So, indirectly, he should be afforded those rights as portfolio manager for those Funds.

Q Sir, you can't point to anything in any contract that gives Mr. Dondero the right to step in and impede transactions that have been authorized by Mr. Seery; isn't that correct?

A Correct.

Q Okay. But yet you have never told Mr. Dondero that he should not interfere with Mr. Seery's trades; isn't that a fact?

A Correct.

Q In fact, you never personally took any steps at any time to make sure that there would be no further interference with

the Debtor's trading activities; isn't that correct?
A Correct.
Q And that's because you believe, as the chief compliance officer of the Funds, that Mr. Dondero should have the leeway to make the determination as to whether or not the transactions are appropriate; isn't that correct?
A He should be able to be heard in the transactions that are being made, correct.
Q Sir, not to be heard, but to make the determination. Let me ask the question again. You believe, as the CO -- CCO of the Funds, that Mr. Dondero should have the leeway to make the determination as to whether or not the transactions are appropriate; isn't that correct?
A Yes.
Q Okay. And you completely deferred to Mr. Dondero; isn't that right?
A For the investment determination, yes.
Q And based on that deference, you never took any steps at any time to make sure no one on behalf of the Advisors or the Funds impeded or stopped transactions authorized by Mr. Seery, correct?
A Correct.
Q You understand there's a TRO in place today that prevents Mr. Dondero and the Advisors and the Funds from interfering with Mr. Seery's trading activities; isn't that right?

MR. RUKAVINA: I'm going to object to that, Your Honor, to the extent that calls for a legal conclusion. And I do think it mischaracterizes the testimony. I'm sorry. The TRO.

THE COURT: Overruled.

BY MR. MORRIS:

Q You can answer, sir. Would you like me to repeat the question?

A Yes, please.

Q You understand that there is a TRO in place -- TRO in place today that prevents Mr. Dondero, the Advisors, and the Funds from interfering with Mr. Seery's trading activities on behalf of the CLOs, correct?

A Correct.

Q But in the absence of the TRO, in your view, whether you tell Mr. Dondero not to interfere with Mr. Seery's trades depends on the facts and circumstances that exist at the time, right?

A Correct. From a -- yes.

Q Okay. And up until this point, there have been no facts and circumstances that have caused you to tell Mr. Dondero not to interfere with Mr. Seery's trades on behalf of the CLOs, correct?

A He can't because of the TRO.

Q Correct. But if the TRO wasn't in place, it's possible

that you wouldn't take any steps to stop Mr. Dondero from impeding Mr. Seery's trades; isn't that right?

A I mean, if Mr. Dondero or other investment professionals have a view, that they should be -- they should have a right to be heard as preference shareholders of the CLOs.

Q Okay. But if the TRO wasn't in place, you wouldn't act to stop Mr. Dondero from interfering or impeding the Debtor's trades on behalf of the CLO; isn't that right?

A He would -- if he would be permitted to talk to Mr. Seery.

Q Okay. Prior to the imposition of the TRO, you took no steps to stop Mr. Dondero from interfering with Mr. Seery's trades, correct?

A Correct.

Q And if the TRO wasn't in place, it's possible you wouldn't take any steps to stop Mr. Dondero from impeding -- impeding Mr. Seery's trades again; isn't that right?

A If there's an investment rationale as to why they feel the trades shouldn't be done, I -- again, I feel like Mr. Dondero or the other investment professionals should be able to raise those points with Mr. Seery.

Q Do you think they should be able to stop the trades?

A I -- I -- I think they should be able to question the trades. But flat-out stop them, I'd probably say no.

Q Then why didn't you do anything before the TRO was entered?

A Um, I'm sorry, can you repeat the -- do anything in -- in what manner?

Q Why didn't you take any steps before the TRO was entered to stop Mr. Dondero from interfering and stopping and impeding the Debtor's trades?

A I think, as I recall, there was only one -- one set of trades in question that he stepped in on.

Q So, one is okay? How about two?

A Or, sorry. There were two trades on one day that -- that, you know, he questioned. Or stepped in on. I don't -- I don't recall him stopping any other trades thereafter.

Q That's all you know about, right?

A Correct.

Q And with that knowledge, it never occurred to you to tell Mr. Dondero to knock it off, did it?

A He believed the trades weren't in the best interest for the investors, so I did not.

Q And that's what you mean by deferring to him; isn't that right?

A From the investment perspective, yes.

Q Thank you for your -- thank you for your honesty. As the CCO, you have never communicated with the Issuers about the Debtor's performance under the CLO management agreements; isn't that right?

A Correct.

Q And that's because you didn't believe it was in your responsibility as the CCO to check with the Issuers to see if the Issuers believed that the Debtor was in compliance with the CLO management agreements, correct?

A That communication would have involved counsel and that communication didn't occur. I wouldn't have reached out to them directly.

Q Yeah. You didn't believe it was within your responsibility as the chief compliance officer to communicate with the Issuers to see if they had any views as to Mr. Seery's performance as portfolio manager, correct?

A Correct, because it would have involved me working with counsel and there was never direction to do that.

Q As the chief compliance officer of the Defendants, you have no idea if anyone on behalf of the Advisors or the Funds ever asked the Issuers whether they believed the Debtor was in default under the CLO management agreements, correct?

A Correct.

Q As the CCO, you have no idea if anyone on behalf of the Advisors or the Funds ever asked the Issuers whether they believed was in breach under the CLO management agreements, correct?

A Correct. I believe there was a call that I wasn't a part of, that it was just involving lawyers, that I don't know what was discussed on the call. So, correct.

Q As the CCO, you have no idea if anyone on behalf of the Advisors or Funds ever asked the Issuers whether they believed it was appropriate to try to take steps to terminate the CLO management agreements; isn't that right?

A Correct.

Q None of the Issuers joined any of the letters that were sent on behalf of the Funds and the Advisors, right?

A I didn't -- I don't recall seeing their names listed.

Q As the CCO, you don't have any understanding as to what the standard is for terminating the CLO management agreements unless you get legal advice; isn't that right?

A Yes. It was -- it would be a discussion with counsel, given the complexity of the agreements.

Q But as a factual matter, you're not aware of any facts that would support the termination of the CLO management agreements except that there were trades that Mr. Dondero didn't think were in the best interests of the Funds; isn't that right?

A Yes. And because the belief was those trades weren't maximizing value for the preference shareholders.

MR. MORRIS: I move to strike everything after the word yes, Your Honor.

THE COURT: Granted.

MR. MORRIS: I have no further questions.

THE COURT: All right. Mr. Rukavina?

MR. RUKAVINA: Your Honor, I'll reserve my questions for my case in chief.

THE COURT: All right. Mr. Post, that concludes your testimony for now. Stick around.

Mr. Morris?

MR. MORRIS: Your Honor, last witness, and I hope it's rather brief, actually. The Debtor calls James Seery.

MR. RUKAVINA: Your Honor, may we have a brief restroom break, all of us in this room, before we start the next witness?

THE COURT: All right. We'll take a five-minute restroom break. I know part of the long day is because of my commitment at the lunch hour, but you all did estimate three or four hours for this hearing, right? That's what I recall.

MR. MORRIS: We did.

MR. RUKAVINA: Your Honor, I was never consulted on a time estimate. I had no idea that someone said three to four hours.

THE COURT: All right.

MR. MORRIS: And part -- part of that is my fault and the technological problems we had this morning, so I take responsibility for that, Your Honor, and I sincerely apologize.

THE COURT: Okay. Well, just so you know, we cannot come back tomorrow. I've got two -- too booked today tomorrow

to come back, so --

MR. MORRIS: I don't expect Mr. Seery to be more than about 15 minutes.

THE COURT: Okay. We'll take a five-minute break.

THE CLERK: All rise.

(A recess ensued from 3:22 p.m. until 3:32 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. I wanted to clarify one thing I said, just so no one is confused. I know that originally you had today, Wednesday, and Thursday, 26th, 27th, and 28th, for confirmation. So if anyone thought, oh, we're coming back tomorrow on this if we don't finish, because originally you had all three of those days, you know, as soon as we continued the confirmation hearing, we started filling in Wednesday. So we have three different Chapter 11 case matters set tomorrow. And so it was, you know, you give up time and we have people usually wanting to get that time, so that's what happened.

But anyway, people, we'll talk fast and we'll get it done today, right?

MR. RUKAVINA: Your Honor, my -- Your Honor? Oh, wait. I need to --

THE COURT: Ooh, it sounds like you're in a cave. Let's get those headphones on.

MR. MORRIS: I promise to be as quick as I can, Your

Honor.

THE COURT: Okay. Mr. Rukavina, were you trying to say something?

MR. RUKAVINA: I was, Your Honor. Can you hear me?

THE COURT: Yes.

MR. RUKAVINA: This darn video. Too many -- Your Honor, we have an agreed TRO that goes through February the 15th. And I'm certainly not suggesting taking any more of the Court's time than is necessary, but I cannot commit to finishing today, especially because Mr. Morris has taken so much time. So I think we will do our best, but I just want the Court to know that there's no urgency to this, and if we have to come back at some point after Tuesday or Wednesday, there's no possible harm to the Debtor.

MR. MORRIS: Your Honor, it's my hope that we can get this done, and I think the sooner we begin the better.

THE COURT: Okay. Well, we're going to try to get it done. All right, Mr. Seery. You've called Mr. Seery to the stand now?

MR. MORRIS: Yes, Your Honor. The Debtor calls James Seery.

THE COURT: All right. Mr. Seery, please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you.

MR. MORRIS: May I proceed?

THE COURT: You may.

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Seery. Can you hear me okay?

A I can, yes.

Q Okay. Let's just cut to the chase here. You're the CEO of the Debtor; is that right?

A That's correct.

Q And in that capacity, do you understand that the Debtor is party to contracts pursuant to which it manages certain CLO assets?

A Yes.

Q And are you personally involved in the management of those assets?

A Yes.

Q Do you have any prior experience managing other people's money or other people's assets?

A Yes.

Q Can you please explain to the Court your experience and your knowledge as to investing other people's money?

A Yes. I was a finance lawyer -- I'll go quickly, if it's okay. I can fill in later, if you like. I was a finance and bankruptcy lawyer for ten years before I went to Lehman on the

business side in 1999.

In that role, I started immediately in distressed investing. I worked as part of a team of analysts and traders to build distressed positions in prop (phonetic) business, trading Lehman Brothers balance sheet at the time. This was in 1999 and 2000. We were one of the most significant investors on the Street, and I was part of that team, and a leading part of the team, putting on significant investments of our balance sheet, which was Lehman's money, into different kinds of stressed, distressed, high yield investments. That included bonds, that included loans, unsecured, subordinated. Sometimes equity. Typically, we stayed in credit, but a lot of this was very distressed credit, which often ended up as reorg equity.

After that, I began running different teams for making distressed loans to companies that no one else would lend money to. These investments were significant, anywhere from fifty to a billion dollars. Some of the largest transactions in the world at the time were transactions I ran, like a rescue loan to PG&E for a billion dollars. That was in 2000.

After that, I continued to grow my career there, running distressed investments. In 2005, I took over the loan business at Lehman. That included all high-grade loans, high-yield loans, trading and sales of those loans; managing that portfolio, which was in excess of $10 or $20 billion,

depending on the time; exposure both in committed transactions as well as funded loans; the hedging of that portfolio; traders and salespeople working for me. In addition, I had significant responsibility for the distressed book, as well as all restructuring business at Lehman.

After Lehman, I -- and I was one of the people who sold Lehman -- I became a senior investing partner at RiverBirch Capital. We were about a billion and a half dollar long/short investor, mostly stressed and distressed, but a lot of high-grade trades as well, particularly in preferred stocks. That was a global business, but primarily U.S., Europe, some Asian investments as well.

Since then, I've gotten to Highland. I've been responsible for Highland's investments. After the first quarter, when the performance managed by Mr. Dondero was absolutely disastrous -- we lost about $80 million in equity securities, positions that he managed, about $50 million in the Select Equity Fund, and about $30 million in the -- in the Highland internal account. After Jefferies seized the Select account, I took over the --

A VOICE: I think Mr. Seery has sort of gone beyond the question of his background.

THE WITNESS: He's asked me if I was experienced in investing other people's money. I was giving that background. But we -- I can stop or I can keep going, if you like.

THE COURT: Okay. If that was an objection, --

MR. MORRIS: Let's --

THE COURT: -- I overrule it. Go ahead.

THE WITNESS: I've been managing that portfolio. In addition, after Mr. Dondero left, but I actually started looking at it before that, started taking over the CLO portfolio, or taking a look at it, frankly. We have a -- we have an experienced professional sitting on top of it, Hunter Covitz, who manages the day-to-day exposure. But those portfolios -- we call them CLOs, Your Honor, but I think you've heard testimony before, they're not really. Acis 7 is a CLO. The 1.0 CLOs are very old investment vehicles that are primarily structured as, right now, closed-end investment funds. They don't have the typical diverse portfolio of loans that a CLO has. They have mostly reorg equity or positions in real estate and in MGM. So the -- the securities we've been talking about in these trades are publicly-traded liquid securities that Highland took as post-reorganization equity.

Q Thank you, Mr. Seery. Let's cut to the chase on the AVYA and the SKY. Nobody seems to have asked you this question, but did you -- have you looked to sell AVYA and SKY securities since the time that Mr. Dondero left in October?

A I have, yes.

Q Can you please explain to the Court your investment rationale, the reason why you wanted to sell -- let's just

take them one at a time. Let's start with AVYA. In the last couple of months, why have you wanted to sell AVYA?

A Well, the original impetus to sell AVYA came from Mr. Covitz when it started moving up as a post-reorg security in the communications space that had -- had really performed extremely poorly post its Chapter 11. Mr. Covitz over the summer felt we should start lightening up on that position. I agreed. He did that. And Mr. Dondero eventually cut him off.

As it got to the fall, what I did was I got Mr. Covitz, as well as then the analyst -- the analyst on that is Kunal Sachdev. That's the Highland analyst on the position -- as well as Joe Sowin and Matthew Gray, who's another senior analyst. And I looked at all of the equity positions in the CLOs and wondered why we had them. What was the view? Were they worth keeping?

Primarily, the ones we looked at were four of the post-reorg equities that were liquid. A company called Vistra, a company called Arch Coal. Vistra is the old TXU, a well-known bankruptcy. Arch Coal, another well-known bankruptcy. Avaya, a bankruptcy; and Sky Champion, a less -- less-known bankruptcy but came out of there.

Mr. Gray is the analyst on Vistra and Arch. We determined, based upon his recommendations, not to sell those. Mr. Sachdev was the analyst on Avaya, and he believed that it had reached its peak, and even though it could continue to go

up or down -- stocks often do that -- he did not think that the value was there. His recommendation was to sell.

Mr. Sowin was in those meetings. Prior testimony to the contrary or any statements that were said before are completely false, they're completely made up, so I know it's frustrating and I apologize for -- for being frustrated.

So we decided that we would sell the Sky Champion. A pretty simple answer. Highland didn't have an analyst. Literally didn't have an analyst. Nobody had a view as to what the stock was. It just sat in there, in two CLOs, without anybody paying any attention to it.

I had Matthew Gray take a look. He felt that it was at fair value. I did my own work on it, felt it was at fair value, notwithstanding some good tailwinds in -- secular tailwinds in the home building space, and determined that that CLO should sell those securities.

Q Thank you, sir. Prior to his departure at Highland, did Mr. Dondero have responsibility over the management of any of the CLO assets?

A He did, yes.

Q And do you understand, do you know whether Mr. Dondero sold AVYA securities on behalf of the CLOs and on behalf of the Funds during the time that he was employed as the portfolio manager from January until October 2020?

A I do. And he did sell those securities. The chart you

put up, based upon our business record, is accurate, and he engaged in significant sales of those securities throughout the year.

Q Okay.

MR. MORRIS: Can we please put upon Demonstrative #1?

BY MR. MORRIS:

Q Okay. And can you just explain to the Court what this document is?

A It's a trade report, one of Highland's -- this shows the whole platform, so it's the aggregate sales. The name of the email -- I apologize, I forgot the system; it just left my mind. But the email you saw before is anybody on the platform used for various trades if they're part of a trading group. And that's to make sure that, across the portfolio, in its corporate platform, you aren't running into either compliance problems or allocation problems that could lead to a compliance problem.

Q So this shows sales of Avaya on these particular dates. The trade is -- the trade symbol is AVYA. This is a liquid security. Trades in, you know, liquid equity markets. I believe its average trading volume is somewhere about a million and a half a day, approximately. So you have a trade date. You have the type of transaction. It could be a buy or a sell. These are all sales. The quantity. And then the price. And then it would have the Fund, and then the

aggregate dollars, which is simply multiplying the price times the quantity.

Q And if we just scroll down to the end of the document, October 9th, is that around the time that Mr. Dondero left Highland?

A Right around that time. This was coming into a number of hearings that we thought it was most important to have Mr. Dondero depart, particularly in light of some of the positions that he and his companies were taking vis-à-vis the Debtor.

MR. MORRIS: Can we put up Demonstrative Exhibit #2, please?

BY MR. MORRIS:

Q Can you explain to the Court what this is?

A Uh, --

MR. MORRIS: And again, just for -- just for the record -- sorry to interrupt, Mr. Seery -- the backup for this information can be found at Debtor's Exhibits BBBBB to SSSSS

BY MR. MORRIS:

Q Go ahead, sir. Could you explain to the Court what this is?

A Yeah. This is just a pretty straightforward chart showing the bars being sales and the lines being the -- the closing sale price of a buy on that day. And so you can see, you know, with the market fallout in the early part of the year, AVYA hit a low, but like most of the securities in the market,

it has come back very strongly. And you see Mr. Dondero's trades earlier in the year, the rest of it during the middle part of the year, sales in the third quarter, and then, when he's gone, I began selling in November and December.

Q Now, so is it fair to say that Mr. Dondero and the Defendants didn't completely impede and stop the Debtor from selling AVYA shares?

A That's fair. What -- there's a little bit of confusion. The way the trading desk worked previously is that you have these separate companies but they're not really separate companies. HCFMA is populated by about seven employees. Many of them have functions across a number of different companies. HCFMA exists solely because Highland funds it. They haven't paid fees of about three million bucks this year. They owe $10 million related to a disastrous bailout of what was an open-end fund called Global Al a couple years ago where the SEC, you know, came in and took significant action, almost shut significant parts of Highland down. And these traders do the trading of all the equities across the platform.

So I typically would call them, and this is how we worked in the spring when I took over the internal account after the seizure by Jefferies of Mr. Dondero's management of the Select Equity account. I would work with Joe Sowin as the trader, make decisions on what we wanted to do for the day, he would execute those trades by going out in the market with a broker,

selling them to -- to the dealer on the other side, run it through our automated system, and then the trades get closed with the back office.

So there's the trade, which is your agreement to buy or sell at a particular dollar price. That gets inputted into the OMS system, and then from there it's the back office takes over, and then ultimately securities are delivered versus payment to the counterparty.

Q Okay. And can you just describe, you know, in one or two sentences, your interpretation of this chart and how your sales and the green bars compare to Mr. Dondero's sales and the brown bars?

A Well, the two simple obvious answers are, one, they're smaller, and two, they're at higher prices.

Q Okay. You also traded, since Mr. Dondero's departure, securities known as SKY; is that right?

A That's correct. It's Sky Champion Corp. The ticker is SKY.

Q And did Mr. -- to the best of your knowledge, Dr. Mr. Dondero trade in SKY securities prior to his departure?

A I don't believe so. As I said earlier, we didn't appear to have an analyst on that for some time. I don't even know how far back it goes. It was a bit of an orphan security sitting in the portfolio. It's only -- it was only in two of the CLOs.

Q Okay.

MR. MORRIS: Can we please put up Demonstrative #3, please? Okay.

BY MR. MORRIS:

Q And can you just explain to the judge what's depicted on this page?

A Again, similar to the last chart, you have the dollar price of the security at the close each day, throughout the year, and then the green bar showing where we began to sell securities for those CLOs.

Q And so, again, is it fair to say that Mr. Dondero and the Defendants haven't completely stopped the Debtor from engaging in SKY transactions?

A That's correct. What we did was the so-called workaround previously mentioned, was that we decided that I would have to do the trading directly. So I'd literally look at the stock each day, talk to the broker at Jefferies, determine what level to sell at, communicate with him throughout the day, work through transactions. Then he reports in whether he's been able to sell and execute on our behalf. When he's done that, then we have the back office manually enter the trades, as opposed to doing it from the automated trading desk, and then have those trades close. So, so far, knock on wood, we haven't failed on any trades.

Q Okay.

MR. MORRIS: We can the demonstrative down, please.

BY MR. MORRIS:

Q Just two more topics here, sir. Can we talk briefly about what efforts, if any, the Debtors have made to avoid this litigation? I'll just ask them one at a time. Has the Debtor made any attempt to transfer the CLO management agreements to the Defendants or to others?

A Well, our original construct of our plan was to do that. We've since determined, when we tried to do that, we got virtually no response from the Dondero interests. The structure of the original thought of the plan was if we didn't get a grand bargain we would effectively transition a significant part of the business to Dondero entities, they would assume employee responsibilities and the operations, and then assure that the third-party funds were not impacted.

As I think I testified on the -- I can't recall if it was the deposition or my prior testimony in court -- Mr. Dondero, true to his word, told me that would be very difficult, he would not agree, and he has made that very difficult.

So we examined it. We've determined that we're going to maintain the CLOs and assume them. But we originally tried to contemplate a way to assign those management agreements. We've had --

Q All right.

A -- significant discussions with the CLO Issuers, and

they're supportive of us retaining them.

Q Okay. You were on the -- you've been participating or listening in to the hearing throughout the day; is that right?

A I have, yes. I apologize. I didn't leave the screen on because I didn't want to suck up bandwidth.

Q Are you familiar with all of the K&L Gates letters that that were reviewed today?

A I am, yes.

Q Did the Debtor request that the Defendants withdraw those letters?

A Yes, we did.

Q Had the Defendants withdrawn those letters, might that have avoided this whole litigation?

A I think it would have. What we wanted to have here is a withdrawal of the letters and an agreement by the clients for the -- the K&L Gates clients that they wouldn't interfere with the operations of the Debtor and our drive towards a plan. They could take their legal positions and object to the plan, if they like, but interfering on a day-to-day basis was unacceptable to us in terms of trying to operate this business in the most efficient manner.

We specifically requested that they do that. This is, I don't think, lost on anybody, certainly not on me in my experience here for years: These entities are all dominated and controlled by Mr. Dondero, and each of these attacks is

specifically coordinated for the purpose of diverting the Debtor, causing confusion, and forcing us to spend estate resources.

Q Do you know if the Debtor also asked the Defendants to avoid this whole injunction proceeding by simply filing their motion to lift the stay and see if they could actually win a motion to terminate the contract?

A Well, what we did was we contemplated the best, most efficient way out, and it was either withdrawing the agreement; if they didn't agree, then we'd said you should file your stay motion immediately and let's have this determined. We told them, short of that, if they weren't willing to do that, then we would have to put this in front of the Court to try to make sure that we could operate the business.

Q All right. So, just to summarize, you attempted to sell the CLO management agreements, but were unable to do so; is that right?

A I would say assign. We would have looked for a payment, there is a cure payment that we have to make, but we didn't we didn't conduct an auction for the CLO assets.

Q And to the best of your knowledge, the Defendants never withdrew the letters; is that right?

A They did not.

Q And to the best of your knowledge, the Debtors -- the

Defendants never brought their contemplated lift stay motion, right?

A They have not, no.

Q And so why did the Debtor bring this action?

A Well, quite clearly, to try to prevent the managers and Mr. Dondero and the Funds from interfering with the way that we operate the business. We intend to continue to manage the CLOs, we intend to assume those contracts, we intend to manage them post-confirmation, after exit from bankruptcy. And causing confusion among the employees, preventing the Debtor from consummating trades in the ordinary course, deferring those transactions, we thought put the estate at significant risk, in addition to the cost.

Q Did you hear Mr. Rukavina in the opening suggest that these might, in fact, be money-losing contracts?

A I did, yes.

Q Why would the Debtor want to assume money-losing contracts?

A They're not money losing contracts.

Q And why, why do you say that?

A They generate fee income. So the fees on each of these CLOs get paid to the Debtor. Now, not all of these CLOs, as I mentioned earlier, are -- none of them are ordinary CLOs, other than Acis 7. But not all -- because they don't all have liquid assets that are able to pay their fees each quarter,

some are deferred. There are some CLOs that will probably never pay any deferred fee because they are underwater. Those are not CLOs that Mr. Dondero or the Funds own any of. That's not really a surprise. But we will continue to manage those and look for ways to exit for those investors who are noteholders who are underwater in those CLOs.

Q Okay. Can you describe for the Court the Debtor's contentions as to how the conduct that has been adduced through today's evidence, how is the Debtor harmed by Mr. Dondero's interference in the trades and the sending of these letters?

A I think it's clear in terms of operational risk. Being forced to construct a workaround to consummate trades that we think are in the best interest of the Funds.

It's telling not only that neither Mr. Dondero nor Mr. Sowin nor -- Mr. Sowin was on the calls and agreed to the analyst view, by the way -- nor anybody from MHF ever asked me a question, their lawyers in the deposition never asked me why we were selling these securities. They simply want to get in the way, cause additional risk to the estate, and cause additional exposure with respect to legal fees, divert our attention from trying to consummate the case. I think that's, in my opinion, that's pretty clear.

Q Is there any concern on the part of the Debtor that that Mr. Dondero's emails and conduct is creating uncertainty

among the staff as to who's in charge?

A I think they did initially, and if they continued, they would. Right now, the workaround is working pretty well. We still do keep Mr. Sowin on the emails to make sure that, you know, from a compliance perspective, that our sales, he knows about; that we're not stepping on each other's markets, if you will; that we're not getting in the way that -- in the way if he wants to sell assets from a different MHF other managed asset holding, but we do have a workaround that works right now.

I think the biggest risk is, because it's much more manual, you have risk of so-called fat-finger trades, where you think you're selling a thousand and you sell 10,000, you think you're executing a sale and you're executing a buy, you think you're executing from an account that has the securities and end up selling short from an account that doesn't. So we've got to be very careful of that, but the team is doing that now. There certainly was confusion at the start.

Q And can you just explain to the Court your view as to how the Debtor is able to -- how the Debtor will be able to service the contract on a go-forward basis?

A The CLO contracts?

Q Yes.

A We'll have a team of folks able to manage these assets with professionals that are experienced credit analysts,

equity analysts. I think we'll be able to manage this -- these assets in a pretty straightforward manner. It's not going to be very difficult.

Q Has the Debtor been harmed through the diversion of your personal attention as CEO in responding to all of this?

A I like to think that I can juggle a lot of different things. I would prefer not to have to be looking at the securities levels each day and feeding out securities that we determine to sell through the broker at Jefferies, who, notwithstanding, is doing a great job. It's the job of the trader to actually do that and day-to-day -- throughout the day monitor the markets and look for the best place to sell.

So do I think I'm getting the best execution? I think the trader at Jefferies is excellent. Do I think if a trader on the Highland side was involved every step of the way, I think it would be better.

Q Have the Debtor's professionals' attention and resources been diverted to deal with all of this stuff?

A That -- I think that's -- that's quite clear as well. It's a significant expense.

Q Okay.

MR. MORRIS: Your Honor, I have no further questions of this witness.

THE COURT: All right. Mr. Rukavina?

MR. HOGEWOOD: Your Honor, if you please, Lee

Hogewood from North Carolina. You've admitted me *pro hac vice*. If I may do cross-examination, I would appreciate it.

THE COURT: All right. Go ahead.

MR. HOGEWOOD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HOGEWOOD:

Q Mr. Seery, let me ask you about the letters that came from our firm, and especially from me, beginning on December 22nd. I think you spoke about those generally. If you need them to be called up, I think my questions will be crisp as to the letters generally, but we could certainly look at them specifically, if need be.

There was initially a letter dated December 22nd, 2020, that's Debtor's Exhibit DDDD, at Docket 39. I take it you've read that letter?

A I have, yes.

Q And it's fair to say that was a request you had seen before?

A I don't think that's fair to say, no.

Q You had not seen a request to discontinue trades until the confirmation hearing?

A I don't believe so, no.

Q Okay. So that, that was the first time a request had been made not to trade in the CLO securities prior to confirmation?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: I --

THE COURT: Go ahead. You can answer.

THE WITNESS: I don't recall you sending me a letter before that, but I -- if you have, then I apologize. I thought I was pretty familiar with them, but I don't recall you sending me that request previously.

BY MR. HOGEWOOD:

Q Okay. I'm sorry. That was the first request you had received from me, is that -- that's correct?

A Yes.

Q But there had been prior requests of a similar nature?

A Not to my recollection. Is there a letter?

Q All right. Well, let me -- let me move on. You weren't intimidated by my letter, were you?

A Was I intimidated by your letter? No, I was not intimidated.

Q And it didn't cause -- the letter itself did not cause you or the Debtor to alter your investment strategy?

A It did not, no.

Q And it did not cause you or the Debtor to refrain from operating the company in the manner that you perceived to be in its best interest?

A It did not.

Q It did not cause you to change any of your trading

decisions?
A No.
Q You and your counsel responded -- or, your counsel responded to the letter a couple of days later; isn't that correct?
A Yes.
Q And the response rejected the request that had been made and demanded that the letter be withdrawn; is that right?
A Yes.
Q So the range of communication is a set of lawyers representing adverse parties asserting their respective positions? Is that a fair characterization of that set of communications?
A No.
Q Okay. Would you characterize it differently?
A Yes.
Q All right. How so?
A I believe you sent a letter with no good-faith basis, knowing what the contracts say as an experienced lawyer, knowing there was not cause, yet still making the same threats, basically couching them as a request. But I don't think there was any good-faith exchange of ideas. No one even asked me why I was making the trades. I think you were aware of that.
Q You -- but you testified that, nonetheless, the letter did

not cause you to conduct yourself in any other manner than you would have conducted had you not received the letter; isn't that right?

A That's correct.

Q So I think there's some confusion, then, and I just want to clear this up. There was earlier testimony, both at your deposition, that -- that my clients actually interfered with and caused trades not to occur on or around December 22nd and 23rd of 2020. And that's not correct.

MR. MORRIS: Objection. Your Honor, the evidence is in the record.

MR. HOGEWOOD: Okay. Well, let me --

THE COURT: All right. You're going to have to rephrase.

BY MR. HOGEWOOD:

Q Yeah. Let me -- let me say it differently. Focusing solely on December of 2020, every trade that you initiated closed; isn't that correct?

A Every trade. Yes. We did not fail one trade.

Q Okay. And so the issue that you have raised in your pleading is that there were -- there was an expectation that employees of my clients would book trades, which is essentially a backroom operation, after the trade has closed. Isn't that right?

A That's incorrect.

Q Okay. So, once again, let me just get -- there were no trades that you initiated that failed to close; is that right?
A That's correct.
Q And nothing that was done by the Defendants resulted in a trade that you wished to make in December of 2020 to fail to occur or fail to close; isn't that right?
A That incorrect.
Q So you initiated a trade that did not close?
A Yes.
Q In December of 2020? And when was that?
A I believe that's the case, yes.
Q And specifically what trade did not close that you initiated?
A I'd have to check the notes, but the specific trades were my attempt to initiate the trade with the desk. Then the trading desk goes into the market and makes the sale. Once it's inputted into the order management system, referred to as an OMS, then it gets processed for closing. In November and in December, Mr. Dondero instructed those employees not to initiate those trades. So there was never an agreement. When I initiated a trade, which was the workaround you saw referred to, I quite simply called Jefferies directly and I had the back-office folks manually input it instead of the trading desk.

Sorry. I just wanted to make sure we cleared that up.

Q No, just -- that -- that's helpful to understand. But I think, focusing again solely on December, every trade you initiated closed?

A Every trade that I actually went and made in the market closed.

Q And indeed, if --

MR. HOGEWOOD: I observed your demonstrative exhibits, and if I could ask that the one related to the Avaya trades be called up, Mr. Morris. is that possible?

MR. MORRIS: Yeah, sure. Is that the first one with Mr. Dondero's trades, or do you want the chart?

MR. HOGEWOOD: The -- the -- I think it was your Demonstrative #2 that showed the timeline of the trades.

MR. MORRIS: Yeah. You bet.

(Pause.)

MR. HOGEWOOD: Thank you. Thank you very much.

BY MR. HOGEWOOD:

Q So, just so I understand this document, the bottom axis is the passage of time, and when we get into the period between November of 2020 and the end of 2020, 12/31/2020, there are -- there's a green bar that has the numbers 50,000 at the top of it. That reflects what, Mr. Seery? The number of shares or the dollar amount of the trades?

A Number of shares.

Q And while this is not date-specific, do you know when

those sets of $50,000 trades happened? Or --

A I don't --

Q -- 50,000 shares trades happened?

A I don't know the specific dates off the top of my head, no.

Q But looking at it just in comparison to the calendar, that -- that's awfully close to December 22nd and 23rd, is it not?

A It appears to be, yes.

MR. HOGEWOOD: And Mr. Morris, if the I guess it's the SKY document could be pulled up as well? I just want to be clear --

MR. MORRIS: Demonstrative #3, please.

MR. HOGEWOOD: Yes. Thank you.

BY MR. HOGEWOOD:

Q The timeline on this demonstrative is similar, is it not?

A Yes, it is.

Q It's showing trades by day throughout the course of the year?

A That's correct.

Q And again, there are a significant number of trades in SKY on what looks awfully close to the few days before Christmas of 2020; is that right?

A That's correct.

Q Okay. And this is the period of time that we're talking about there being interference by the Defendants' employees;

is that right?

A Yes.

Q Okay. I'll move on. So, the next letter in question was one that came the day after, on December 23rd. Again, that was a letter from me to your counsel. Do you recall that letter?

A Yes.

Q And the letter of the 23rd, if we need to look at it, is the EEEE, Docket 39. You read that letter as well?

A Yes.

Q And you disagreed with the position taken in the letter?

A I'm trying to remember the specific position in that one. Was that the one threatening to try to terminate the CLOs without having checked whether there's cause? I just don't recall.

Q Why don't we call it up, if we can?

MR. HOGEWOOD: Mr. Morris, if you could help us, because it's one of your exhibits, that would be great. But Ms. Mather has got it up, so that's great.

BY MR. HOGEWOOD:

Q Mr. Seery, can you see the December 23rd letter?

A I can, yes.

Q And I think you referred to it as a threat to terminate the portfolio management contracts?

A I wasn't sure. That's why I was just asking if this was

that one. I don't -- I don't recall.
Q Right. And if you review the first page and the second page, does that confirm your recollection that that is the one related to portfolio management contracts?
A I can't see the second page. I believe it is. I'm not trying to --
Q Yeah, no, --
A If you represent, I'll accept it.
Q Take your time.
A (Pause.) Yes.
Q Okay. And I think you already said this: You strenuously disagreed with the positions stated in the letter?
A Yes.
Q But again, you were not intimidated by the letter?
A Intimidated? No.
Q The letter didn't cause you to change your investment strategy?
A No.
Q It didn't cause you to trade or not trade in a particular manner?
A No.
Q You continued to function the Debtor's operations as you deemed appropriate?
A Yes.
Q To your knowledge, no CLO or Issuer has taken any steps to

remove the Debtor as the portfolio manager?

A The CLO or the Issuers?

Q Yeah. No one's -- no one's taken a position that you should -- that the Debtor should be removed as a portfolio manager?

A Not -- not from the Issuers, no.

Q And -- or, I'm sorry. And so when you -- when you brought a distinction between the Issuer and the CLO, are you -- are you referring to CLO Holdco?

A No.

Q Okay. Has a CLO taken steps to remove the Debtor as a portfolio manager?

A The CLO is the Issuer.

Q Okay.

A So the answer is no.

Q Okay. So no one has -- no one has acted to take any -- to do anything as it relates to the removal of the Debtor as the portfolio manager?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: I'm quite sure the CLO Issuers haven't, as they agreed and we've been working with them on an assumption. With respect to what your clients have done, I don't know.

BY MR. HOGEWOOD:

Q But you don't have any evidence that my clients have taken any action in violation of the automatic stay to -- to move or encourage the removal of the Debtor as the portfolio manager, do you?

A Other than the letter? No.

Q Other than the letter between me and your counsel?

A Correct.

Q All right. So, and that letter expressly states that any of those actions that would be taken are subject to the automatic stay and the Bankruptcy Code; is that right?

A That's correct.

Q And as we sit here today, the Debtor is not in breach of any contract with any of the Issuers; is that right?

A That's correct.

Q And the letter didn't cause the Debtor to breach any contract with any Issuer, did it?

A Did not.

Q And I think you've already testified today and you also testified in deposition that you anticipate that the -- all of the CLOs will consent to the assumption of the portfolio management agreements in the context of confirmation; is that right?

A Yes.

Q And the plan supplement that you recently filed, you provide a mechanism by which the issue of for-cause

termination is to be resolved, do you not?

A I don't recall if there's a specific provision in the plan supplement. We certainly have, either in the plan or in the plan supplement, a provision related to the gatekeeper function.

Q And that's similar to the settlement that you entered into with CLO Holdco in terms of resolving both their objection to confirmation and the lawsuit against them today; is that right?

A I believe it's similar.

Q Okay. And the gatekeeper is the Bankruptcy Court to determine, short of a full-blown trial, that if cause exists, isn't that correct, under the plan?

A Among other functions, yes.

Q So if the Court confirms the plan, then the concerns that you have are resolved by the gatekeeper function that is the subject of this motion; is that right?

A I think it depends on the contents of the confirmation order.

Q And if the Court denies confirmation, then the stay remains in effect and the letter related to the removal of the portfolio manager was expressly subject to the stay; isn't that right?

A If the letter says it's subject to the stay? It does say that, but it says other false things as well, so I'm not sure

-- I don't know exactly what you're asking me there.

Q All right. It wasn't a very good question, frankly.

Your counsel responded to the December 23rd letter as well and demanded a retraction; isn't that right?

A Yes.

Q And that was sort of a separate (audio gap) with counsel?

A I'm sorry. You broke up for a second there, sir. I'm sorry.

Q I'm sorry. That -- that' -- let's just skip that. You had testified that neither letter was withdrawn?

A I believe that's correct, yes.

Q Are you familiar -- and -- are you familiar with the fact that, in the response letters, your counsel insisted that there be a response and withdrawal by not later than, I believe, 5:00 on December 28th? Do you recall that?

A I don't recall that specifically, but I accept your representation.

Q And do you know whether or not there was a response dated December 28th?

A I don't believe there was a written response. I don't -- I don't recall.

Q All right.

MR. HOGEWOOD: Ms. Mather, can you call up Defendant's Exhibit 84, which is at Docket 45, please? Thank you.

BY MR. HOGEWOOD:

Q So, Mr. Seery, have you ever seen this letter dated December 28?

A I believe I have, yes.

Q And this letter was not attached to the complaint nor your declaration nor the request for a TRO or preliminary injunction, was it?

A If you say it wasn't. I don't recall specifically.

Q Okay. So, you, by seeing this, you realize now there was a response by the 28th. Is that right?

A Yes.

Q And in the -- let me just direct your attention to the final sentence of the first paragraph. It says -- it makes once again clear that the -- any efforts to remove the Debtor as manager would be subject to applicable orders of the pending bankruptcy case, provisions of the Bankruptcy Code, and specifically, the automatic stay. Do you see that?

A I apologize. I don't see it. Which paragraph?

Q I'm at the very last sentence of the first paragraph. There's a sentence that --

A (reading) Subject to applicable orders in the pending bankruptcy case, provisions of the Bankruptcy Code, specifically, the automatic stay.

I read that, yes.

Q Yes. Okay. There was some testimony about the letter

related to Mr. Dondero's eviction. I don't intend to belabor that. But once again, that was a letter between counsel, was it not?

A I believe it -- I believe it was. I don't recall specifically now. I assume -- I assume all of these were directed to counsel.

Q Right. And again, the fact that counsel wrote a letter requesting that the eviction not occur did not change your process and you proceeded with the eviction, did you not?

A I think the letter came after Mr. Dondero was no longer permitted. Eviction is an odd word. He was no longer an employee, so employee not being able to come into the office and hang around and disrupt business isn't exactly an eviction. So I disagree with your characterization there.

Q Okay. Well, so I'll just leave that. I mean, the -- since this exchange of letters, are you aware -- I mean, there was some testimony about the Debtors presenting the Defendants with the choice of either filing a motion for relief from stay or this injunction proceeding would be brought. Isn't that right?

A Yes.

Q And no motion for relief from stay was filed, and therefore this injection proceeding was brought. Is that correct?

A Yes.

Q So the other thing that you know was filed by the Defendants was an objection to confirmation, which was due on January 5th of 2020, correct?

A I'm sorry, Mr. Hogewood. You broke up. Did you say the other paper or pleading that was filed?

Q The pleading that was filed by the -- these who are Defendants as well as other parties to this case was an objection to confirmation, the deadline for which was January 5, 2020. Are you familiar that an objection to confirmation was filed?

A I'm familiar that one was filed, yes.

Q And so the objection to confirmation raised many of these same issues regarding the circumstances under which the various CLO agreements could be assumed; isn't that right?

A I'm not aware of the specifics of the objection.

Q Okay. But nonetheless, my client was under no obligation to initiate yet another motion or lawsuit or pleading against the Debtor beyond objecting to confirmation, was it?

A An obligation? No.

Q And since the objection to confirmation has been filed, there have been a number of pleadings filed in the case. We obviously were required to respond to the motion for preliminary injunction, and it says there's been an objection filed to that. Are you aware of that?

A That -- that you objected to the preliminary injunction?

Q Yes.
A Yes, yes, I'm aware of that.
Q And --
A I'm very aware.
Q And you're aware that there was a proposed settlement with HarbourVest; is that correct?
A We have an approved settlement with HarbourVest.
Q Right. And there were objections filed to that particular -- or, to that particular settlement agreement, were there not?
A Yes.
Q But none of my clients participated in that objection, did they?
A I don't recall the specifics of your clients versus the other Dondero entities, but I'm certain Mr. Dondero participated.
Q But the De... the parties that we represent did not object to the settlement?
A I don't recall specifically.
Q Okay. And another motion that was filed was for an examiner. Isn't that correct?
A I believe that's the case, yes.
Q Yeah. And my clients didn't join that motion, either?
A No. It's a bit of whack-a-mole, but they did not -- they did not -- I don't -- I don't know. To be honest, I don't

know if they did or not.

Q All right. Toward the end of your testimony, you were giving some information about the value of these management contracts in terms of income over the course of the coming year or two. What is the projected revenue with respect to these management contracts?

A Do you mean the CLO 1.0 management contracts?

Q Yes.

A They generate about four-and-a-half to five million dollars a year, depending on the asset base in total, but that's accrual, as I mentioned earlier. It doesn't all come in in cash. It depends on the waterfall. Expect about two-and-a-half to 2.7 million to come in per year during the course of the projected time period.

(Echoing.)

Q Have you done any sort of profitability analysis on the management contracts?

A Not specifically on those contracts, no. We look at the --

Q Okay.

A -- aggregate of the Debtor's receipts versus its costs.

Q Can you -- so, --

MR. HOGEWOOD: Ms. Mather, can you call up the disclosure statement? This is Docket 1473. And in particular, Page 176.

BY MR. HOGEWOOD:

Q So, I'm, Mr. Seery, I'm trying to square the 779 for the month ended -- month period ended in March '21 and no further revenue coming in on management fees with what you just said.

A I'm not -- I'm not sure why. This should -- certainly should have the management fees according to the CLOs if this was included in the assumption of those. We have revenue, they do generate revenue, they currently generate and they will continue to generate.

Q But this is the disclosure statement approved by the Court, right?

A Yes. I'll have to come back and check why that for the year doesn't have it, unless we were assuming that we wouldn't receive any into the -- into this vehicle. I just, I don't know the answer.

MR. HOGEWOOD: Your Honor, that's all the questions I have. Thank you very much.

THE COURT: All right. Redirect?

MR. MORRIS: Can we just leave this up on the screen for a second, very quickly, for Mr. Seery? Can we put the document back?

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, do you recall that the disclosure statement was approved back in November?

A Yes.

THE COURT: Could you repeat the question? I couldn't hear it.

MR. MORRIS: Yeah. That is -- I don't know if somebody's phone is not on mute.

THE COURT: Yes. Please put your device on mute if you're not the one talking. Okay. Someone did. Go ahead.

MR. MORRIS: Thank you.

BY MR. MORRIS:

Q Mr. Seery, do you recall that this disclosure statement was approved back in November?

A Yeah. What I'd said earlier was that I'm not sure if the -- this plan projection conforms with our decision to maintain the CLO management contracts, and so there certainly should be revenue, while it comes in quarterly on the management fee, the base management fee. And it's not always -- each CLO is not always able to pay it in cash. It will depend on our ability to monetize assets, because they don't -- a lot of the assets are not cash-generative. Some are. For example, the Trussway loan is cash generative. The CCS loan is not.

But I'm just not sure why this doesn't show the management fees at all. At least for the whole year, we certainly will have them, unless this is prior to the determination to assume those agreements.

Q Okay. So if the assumption in November was that the

agreements would be assigned, there would be no revenue shown. Is that fair?

A That would have been the assumption prior to us determining that we wanted to assume them, yes.

Q Okay. And do you recall whether the Debtor became more convinced that it would assume the contracts rather than assign them before or after the disclosure statement was approved?

A I don't recall the specific timing, but a number of things happened around this time. First, the Dondero entities were unwilling to even engage on assignment because they were on a much more aggressive, quote, blow up the place strategy. That's Mr. Dondero's quote.

Number two, we settled with HarbourVest, and that significantly increased the value of maintaining the CLO management. The HarbourVest -- or the HCLOF entities own significant preferred shares in the 1.0 CLO structures, and having management of those and being able to monetize those in accordance with the agreement, maximizing value for the benefit of HCLOF, would be far, far better for the estate than letting these assets just sit. We're not trying to drive the price down, because we wouldn't be in the business of trying to buy back those securities on the cheap. We're in the business of trying to maximize value.

Q All right.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: Any recross on that redirect?

MR. HOGEWOOD: No, thank you, Your Honor. Appreciate the opportunity to appear before you.

THE COURT: All right. Thank you.

Mr. Seery, before we let you go, I have a couple of follow-up questions.

EXAMINATION BY THE COURT

THE COURT: These CLOs, I mean, you've said a couple of times they're not really traditional CLOs, except for the Acis 7 one. But I have this question. I've learned back in the Acis case most of what I know about CLOs, I suppose. And what the witnesses told me there were they typically had a 12-year life, and then, yeah, there was some period, you know, the first five years, seven years, something like that, where it was in a reinvestment/refinancing phase, but then after that, you know, we couldn't do that anymore and it was kind of heading towards wind-down.

Anyway, my long-winded question is: Do these CLOs work generally like that or not? Because you said they're atypical.

THE WITNESS: They -- they --

THE COURT: Go ahead.

THE WITNESS: They used to.

THE COURT: Okay.

THE WITNESS: So these are extremely old. These go back to 2006, '07, '08. These are very old CLOs. So they're far beyond their investment periods. Some of them are coming up on their maturities on their debt. Many of them don't have any debt at all.

So you'll recall, Your Honor, that a CLO is a vehicle where you take x-hundred million -- we'll use 400 for fun -- million dollars. You ramp up $400 million of assets. You sell off, for our purposes, $350 million of securities. You have the AAA securities, the AAs, all the way down. And then you have these preference shares.

During a period of time, as cash is generated in the CLO, the CLO is entitled to reinvest it. And that keeps it going. And then it gets beyond its reinvestment period and it's in what folks usually refer to as its harvest period. That's when oftentimes, depending on where rates are, depending on asset value, the rates for the debt obligations or the rate you can receive on your assets, you may see refinancings or resets. Otherwise, the CLOs begin to wind down. They have -- they don't have a life, like a partnership with a final date, but there's maturities on the debt and then there's an expectation that they would wind down.

These CLOs -- which typically CLOs only invest in performing loans, and oftentimes, particularly Highland -- and I could regale you with stories how Highland would take

virtually non-interest-bearing, seventh lien debt -- that's a bit of an exaggeration -- but just to keep the fees going, and not actually convert to equity. A lot of these, that wasn't an option, so they've converted to equity. So I just have one that I happen to have on my screen, Your Honor, Gleneagles. The assets in Gleneagles (echoing) are 16 -- MGMs.

THE COURT: Okay. Someone needs to put their phone on mute. All right. I'm sorry.

THE WITNESS: So it has -- it has -- the specifics aren't particularly important, but its assets are -- just this one I just pulled up; they're all a little different, and -- but mostly the same -- MGM stock. This is MGM Studios, which you read about with James Bond, a very valuable asset. Across the Highland platform, there's roughly $500 million worth of stock. It doesn't pay off any income. So if it had debt -- and I'm not sure if Gleneagles still has any; I'd have to switch screens; I don't believe it does; if it does, it's small -- it wouldn't get any income-generating -- that's not income generating asset.

Vistra, which is the TXU stock I talked about before, is the next biggest asset. Skyline Corporation, which was the one we were selling. That's no longer in there. TCI portfolio, which is a Dondero real estate asset it has, it's an old Las Vegas and Phoenix, Arizona real estate developments. Not income-generating. Not that they don't

have value, but this is much more like what would be referred to as a closed-end fund. It's not going to go out and buy anything. It can't. It can only generate cash by selling assets, give that cash to the trustee, and then the trustee pays it through the waterfall. And that's the way all of these CLOs work.

Now, some of them do have debt. And some of them have a lot of debt, and the preferred shares will never be worth any money, so we refer to those as being underwater. No surprise, the Dondero-related entities don't own any of those junior securities.

The -- some do have debt. A lot of that debt is going to get paid off in the first half of the year because there'll be refinancings at Trussway and a refinancing at Cornerstone. They own debt, and that'll generate cash. It'll go to the CLOs, go to the trustee. First it goes to pay the obligations for the outstanding debt of the CLO, and then the asset dollars, they get put through the waterfall to pay the more junior securities.

THE COURT: Okay. And --

THE WITNESS: And I --

THE COURT: The --

THE WITNESS: I was going to give you -- I contrast that to a more typical CLO, which is whether it's beyond its investment period or not, will have something like 150 to 250,

sometimes more, loans in it. 150 would be on the loan side. It'll own -- own those in smaller amounts. It has requirements as to what its concentrations are in different buckets of types of assets. It has to return -- it has to have an income-generating ability to satisfy certain covenants in its debt obligations and in the indenture. And then it will, once it gets past its investment period, it will start to harvest those assets.

There are different ways for the CLO manager to swap assets, to stay in compliance, to extend out the tenure, but usually markets start to move and there's some reason for the CLO manager to do something like a reset or a refinancing or to call the CLO.

So you'll see a number -- there was one this week, and there'll be a number because of the conditions in the market -- of CLOs called by the, effectively, the equity, saying, Great time to sell, I don't need the short income, call the CLO, do a BWIC or some other way to get dollars for all of the assets, pay off all of my debt, and give me the balance of the proceeds.

THE COURT: Okay. All right. And the plan contemplates that these will all be wound down over a two-year period, correct?

THE WITNESS: It's not a hard -- it's not a hard period.

THE COURT: Okay.

THE WITNESS: So it's not a two-year period. We're going to -- we're going to manage these assets, as any asset manager would, and we've had direct discussions with some of the underlying holders, including one of the biggest investors in the world who's an investor in the CLO but also has a couple separate accounts which they want us to manage, and we'll look for opportunities, depending on the market. We're not going to -- we're not going to just sell. It's not a liquidation. We're going to find opportunities where, if we believe it's the right value, we'll sell. That doesn't mean we'll sell it all in a big chunk. We may manage pieces. We may hold on to some.

Some of them may perform -- some of the assets may actually do things differently than others. For example, Cornerstone, for unknown reasons, has $60 million of MGM stock, not an asset that you'd think you'd stuff into a healthcare business, but this is Highland. That may be sold before, for example, Gleneagles sells its MGM. It'll just depend on, you know, market and the need of the specific investor.

THE COURT: All right. Thank you. That's all the questions I have.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. So, Mr. Seery, I think we're

done with you, but we hope you'll stick around for however longer this goes.

THE WITNESS: I will indeed.

THE COURT: Okay.

THE WITNESS: Thank you.

THE COURT: Does the Debtor rest, Mr. Morris?

MR. MORRIS: Yes, Your Honor. There were those couple of documents that we had used from the different docket that we'll certainly put on the docket with the supplement witness and exhibit list. I just wanted to point that out. And I, you know, I don't recall, frankly, if I moved into evidence each of those extras, and I'm happy to go through it, but it's very important to me that those documents be part of the record. So --

THE COURT: Okay. I think what you added was TTTTT, and I think I admitted it. You moved to admit it, and I said yes, but you're going to have to file it on the docket --

MR. MORRIS: Yeah.

THE COURT: -- as a supplemental exhibit.

MR. MORRIS: Right. And then there were the couple from the other -- let me see if I can get them.

THE COURT: I admitted everything else that you filed on the docket except UUUU, VVVV, and AAAAA.

MR. HOGEWOOD: Yeah. And that's fine.

Can we, Ms. Canty, going from Docket No. 46, can we just

call up Exhibit K to make sure that that's in evidence? Docket 46 from the Dondero adversary proceeding.

Okay. So this was the letter, Your Honor, that I used earlier today with Mr. Dondero. If you scroll down, where I examined him on the trading. This is what led into the December 22nd trading, if you go to the next page. So if it's not in evidence, I would respectfully request that this document be admitted into evidence, Your Honor.

MR. RUKAVINA: Your Honor, I object. This document is hearsay of Mr. Pomerantz.

THE COURT: Okay.

MR. MORRIS: Mr. Dondero has already -- I'm sorry, Your Honor.

THE COURT: Okay. So this is -- I wholesale-admitted all of your exhibits with those three carved out that I mentioned. So you're saying I've not admitted this one yet?

MR. MORRIS: I just don't recall, because this wasn't on the exhibit list. I will point out that we had no objection to the entry into the evidence of all of K&L Gates letters, and I'm really a little surprised, having heard the testimony from Mr. Dondero on this particular letter, that there would be an objection. But I would respectfully request that it be admitted as an exception to the hearsay rule.

THE COURT: All right. Well, I'm going to overrule the objection. I'll admit it.

So, again, it has to be supplemented on the docket.

(Debtor's Exhibit K is received into evidence)

MR. MORRIS: Yes. And there's just one other document, Your Honor, from that same docket. It's Exhibit D, Ms. Canty. I just want to make sure that's in the record as well. And I do apologize again, Your Honor.

THE COURT: Okay.

MR. MORRIS: I didn't realize until I was reading --

THE COURT: We're getting terrible distortion. I don't know where it's coming from, but --

MR. MORRIS: Okay. And this is, this is the email that I -- it's Mr. Dondero's own statement, so it's not even hearsay, but I just want to make sure this is part of the evidentiary record, Your Honor. So I move for the admission of this document as well to our exhibit list.

MR. RUKAVINA: I believe this document has been admitted. I believe -- I believe --

(Echoing.)

MR. RUKAVINA: Is that us? Testing.

THE COURT: All right. Mike, where is that coming from?

(Clerk advises.)

THE COURT: Okay. Mike thinks it's Mr. Morris, but -- so put yourself on mute.

Mr. Rukavina, go ahead.

MR. RUKAVINA: Your Honor, I think this exhibit is in already. If it's not, no objection.

THE COURT: All right. So it will be admitted, and again, you need to file it as a supplement, Mr. Morris.

(Debtor's Exhibit D is received into evidence)

MR. MORRIS: Yeah. Thank you, Your Honor. The Debtor rests.

THE COURT: All right. Mr. Rukavina, I want to go a while longer, so let's at least -- do you have Mr. Dondero as well as Mr. Post?

MR. RUKAVINA: I do, Your Honor. I have both.

THE COURT: Okay. Well, let's go. You may call your witness.

MR. RUKAVINA: Your Honor, we'll call Jason Post.

THE COURT: All right. Mr. Post, I swore you in earlier and I consider you still under oath. Do you understand that?

MR. POST: I do.

THE COURT: All right. Go ahead.

JASON POST, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

MR. RUKAVINA: Oh, turn on the video. Can you see how to do that? Is Jason on the video? Okay. All right. Mr. Post? Hold on a second. I'm hearing myself.

THE WITNESS: I'm hearing the same.

MR. RUKAVINA: Let me turn down my volume. Testing.

Okay. Mr. Post, can you hear me?

THE WITNESS: Yes.

MR. RUKAVINA: Okay.

DIRECT EXAMINATION

BY MR. RUKAVINA:

Q You were asked about some of your background and qualifications. Just so that the record is clear, you are the chief compliance officer for both two Advisors and each of the Funds, correct?

A Correct.

Q And I think we refer to these three defendant funds as retail funds; is that correct?

A Correct.

Q Describe what we mean or what you mean by a retail fund.

A I look at it two ways. There's private funds, which are institutional in nature, and retail funds, which are comprised of open-end funds, closed-end funds, BDCs, ETFs, and that constitutes the suite of funds that are advised by Highland Capital Management Fund Advisors and NexPoint Advisors. And they generally have a broad swath of investors, including institutional investors, but also, you know, just regular mom-and-pop investors.

Q Okay. So, for the Highland -- I'm sorry, for the three retail funds, how much in ballpark investments do they have in the CLOs that are at issue today? Ballpark.

A Maybe call it a hundred million, ballpark. Or a hundred million, give or take.

Q Okay. And for all of the CLOs that Highland manages that the Advisors and other Funds have an interest in, do you have an estimate of how much it manages of CLO assets?

A I believe it's approximately a billion, a little over a billion that HCMLP manages for its CLO assets.

Q Do you have an estimate of how many individual investors there are in the three retail funds?

A I -- thousands. I don't have an exact number.

Q Okay. And I think you mentioned some of the types. Do you have any names of the types of investors that Her Honor might know or have heard of before?

A Off the top of my head, I do not, just -- but they're generally constituted or characterized of the investor types that I mentioned earlier.

Q Okay. Now, these three retail funds, do they own voting preference shares in any of the CLOs that the Debtor manages?

A Yes.

Q Okay. Do they own a majority in any of those CLOs' voting preference shares?

A In aggregate, across the three, they would.

Q Okay.

A With other CLOs.

Q What are those three CLOs, sir?

A I believe it's Greenbrier, Graceland, and Stratford, if I recall correctly.

MR. RUKAVINA: Your Honor, have you received a couriered binder of our exhibits?

THE COURT: I have. I've got them right here.

MR. RUKAVINA: Now I can't hear the judge. What's she saying?

THE COURT: Yes. I've got them.

MR. RUKAVINA: I think you're on mute, Judge.

MR. VASEK: No, you turned your volume down.

MR. RUKAVINA: Oh. I apologize, Your Honor.

So, Mr. Vasek, if you'll please put Exhibit 2 up.

BY MR. RUKAVINA:

Q Mr. Post, are you the custodian of records for the Funds and Advisors?

A Yes. We're required to keep records of ownership and trades for the Funds involved.

Q And you are an actual officer of these Funds and Advisors, correct?

A Correct.

Q Okay. Are you familiar with this Exhibit 2?

A I am.

Q Did you participate in pulling together the underlying information with others to prepare Exhibit 2?

A I did.

Q Does Exhibit 2 accurately reflect the current ownership of the various CLOs by the three retail funds that are --

A At the time it was put together, I believe it did.

Q And approximately when was that?

A I believe it was in the November time frame, middle of November, end of November.

Q Do you have reason to believe that the numbers we're referring to would be materially different today?

A I don't believe they would be materially different.

MR. RUKAVINA: Your Honor, I move for the admission of Exhibit 2 as a summary of underlying data.

THE COURT: All right. Any objection?

MR. MORRIS: Yes, Your Honor. It's hearsay. I understand that the witness has testified to it, but just as I put in the backup for my demonstrative, where's the backup? We're just supposed to take his word for it? There's no ability to check this. This is not evidence. It's a demonstrative.

THE COURT: All right. Mr. Rukavina, do you have backup?

MR. RUKAVINA: Let me ask the witness a couple more questions.

BY MR. RUKAVINA:

Q What would be the backup for this Exhibit 2?

A We'd have to pull the holdings from the intranet and that

would identify the quantity that's held by each of the respective funds and then an aggregate that, over the preference shares outstanding, would give you the percentages that are outlined in this exhibit.

Q Okay. And is that a database that you have personal access and authority over?

A I have personal access to it. Yes.

Q Okay.

MR. MORRIS: Your Honor, *voir dire*?

BY MR. RUKAVINA:

Q Can you easily take that data from a computer and show it to the Court here today?

A Yes. It would just require the CUSIPs for each of the preference shares and then plug it into the intranet and then that would provide a screenshot of the ownership of the CLOs.

Q And is this what that is, basically?

A This is an aggregation -- or, this is a percentage of the shares outstanding, the preference shares. So what would be shown on the intranet would be the quantity and then you'd have to tie that back to the shares outstanding and that would give you the percentages that are shown on this exhibit.

MR. MORRIS: *Voir dire*, Your Honor?

THE COURT: I'm sorry?

MR. MORRIS: May I inquire before this --

THE COURT: Mr. Morris, is that you? Okay. You want

to take him on *voir dire*?

MR. MORRIS: Yes.

THE COURT: Go ahead. Uh-huh.

VOIR DIRE EXAMINATION

BY MR. MORRIS:

Q Yes. Mr. Post, did you prepare this document?

A I provided information and the document was ultimately prepared by counsel.

Q So you didn't personally prepare this, right?

A I didn't personally put this chart together.

Q And you didn't personally make the calculations on this chart, right?

A I would have supplied or assisted in supplying the holdings with reference to the shares outstanding and then they would have done the math to place the percentages.

Q I'm asking a very specific question. You didn't do the calculations necessary to come up with the percentages on this chart, right?

A Me personally, no, I did not.

Q And you can't verify that this chart is accurate, can you?

A I provided, provided the information. Then it's a mathematical calculation.

Q Okay. You didn't take any steps to determine the accuracy of this chart, right? You relied on others?

A There's a -- I would have cross -- you know, maybe cross-

referenced some of the percentages against another spreadsheet that was -- that we had internally.

Q Sir, I didn't want to know what you would have done. You didn't do anything to confirm the accuracy of all of the numbers on this page, correct?

A I believe I may have spot-checked a couple of them. I can't recall specifically.

MR. MORRIS: Your Honor, not only don't we have the backup, but this witness isn't even competent to testify to the accuracy of the chart. I renew my objection.

THE COURT: All right. I sustain the objection.

MR. RUKAVINA: Your Honor, I'll --

THE COURT: It's not allowed.

MR. RUKAVINA: Going back to the -- take that down.

THE COURT: All right. Mr. Rukavina, we're -- our connection to your office is suddenly not very good. Both you and Mr. Post are very hard to hear. So let's see what we can to improve.

MR. RUKAVINA: Is it a question of loudness or quality?

THE COURT: Quality. And I heard you fine just then, but -- so let's try again.

DIRECT EXAMINATION, RESUMED

BY MR. RUKAVINA:

Q Mr. Post, let's go back to those retail funds. How are

those funds managed at the top level?
A They're overseen by a board of trustees.
Q Okay. Do you interact with that board of trustees periodically?
A I do.
Q Okay. Approximately how often?
A At least quarterly, and generally intervening periods. I'd probably say anywhere from every five to six weeks, if not more frequent.
Q Have you been communicating with them more frequently recently?
A Yes.
Q As the CCO of the funds, who do you ultimately report to?
A The board.
Q Is Mr. Dondero on any of those boards?
A He is not.
Q Okay. Are those boards capable, to your experience, of making independent decisions?
MR. MORRIS: Objection to the form of the question.
THE COURT: Overruled.
THE WITNESS: I think the question, is are they capable of making independent determinations? Yes.
BY MR. RUKAVINA:
Q Okay. Explain the interaction between the Fund Advisors and the retail funds. What -- what does the one do for the

other, if you will?
A I'm sorry. Can you repeat that? I didn't -- I didn't hear the question.
Q So, we have the three retail funds.
A Yes.
Q What relationship, if any, is there between the two Advisor defendants and any retail fund defendants?
A So, there's an investment advisory agreement that the Funds have entered into with the investment advisor, and the investment advisor performs investment functions on behalf of those Funds, along with other noninvestment functions.
Q Okay. So is it fair to conclude that, for investment purposes, the Advisors make pretty much all, if not all, decisions for the three Funds?
A Yes.
Q Okay. What about other matters that the board might consider? Do the Funds make -- I'm sorry. Do the Advisors make other decisions for the Funds, or is it an advisory role?
A The Advisors may make other decisions or recommendations, which they then set forth to the board for their approval, if needed.
Q Okay. Does the board have independent counsel?
A They do.
Q Okay. Have you interacted before?
A I have.

Q And is it fair to conclude that the board not only is capable of making independent decisions but has made independent decisions recently?

MR. MORRIS: Objection. Leading.

THE COURT: Sustained.

THE WITNESS: They have.

MR. RUKAVINA: Okay.

THE COURT: That was --

MR. RUKAVINA: And we'll get --

THE COURT: You don't answer.

MR. RUKAVINA: Go into that in another bit.

THE WITNESS: Oh. Sorry.

MR. RUKAVINA: Okay.

BY MR. RUKAVINA:

Q Explain to the Court what your role as the chief compliance officer for the Advisors and the Funds is.

A I think, as you mentioned earlier, it's interaction with the board. Also with regulatory bodies to the extent examinations occur. It could be to ensure oversight and compliance with a fund's prospectus and SAI limitations, and then it's establishing policies and procedures and ensuring that those policies and procedures are adequate to detect any sort of violations that could occur by the Funds.

Q And are you an attorney?

A I am not.

Q Do you frequently work with attorneys?
A I do.
Q Both in-house and external?
A Yes.
Q Good. And do you frequently rely on the advice of counsel?
A I do. At times will present, you know, if there is a question or an issue, present the background to either internal or external counsel and then request their advice on certain matters.
Q So when counsel was asking about why you wouldn't appear at a hearing or listen to a hearing or read a transcript of a hearing, are those the kinds of things that you would rely on counsel?
A Yes. If counsel were to tell me to, you know, attend the hearing, I would have attended the hearing.
Q Okay. Does -- do the Funds and Advisors also have in-house counsel?
A Yes.
Q I think we established that's D.C. Sauter?
A He's been the primary point of in-house counsel more recently, I'd say, within the past three to four months.
Q Okay. And would you expect that perhaps he would be attending hearings and reading transcripts instead of you for some of these litigated matters?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

MR. MORRIS: Leading.

THE COURT: Overruled.

THE WITNESS: I believe he would be.

BY MR. RUKAVINA:

Q Okay. Well, the implication was made, Mr. Post, that somehow you were negligent as CCO by not following the December 16th hearing. I'd like to know, --

THE COURT: Okay. Could you -- could you repeat --

BY MR. RUKAVINA:

Q -- Did you have counsel at the hearing and did you hear from --

THE COURT: Mr. Rukavina, start over with your question. It was a little hard to hear.

MR. RUKAVINA: Okay.

BY MR. RUKAVINA:

Q Mr. Post, the implication had been made that, because you weren't at the December 16th hearing and because you had not read the transcript, that you were somehow deficient as a CCO. I'd like to know, Did you have the benefit of outside counsel's views both before and after that hearing as to that hearing and what happened?

A Yes.

Q It's not that you put your head in the sand and ignored

what's happening, is it?

A That is correct.

Q Okay. And is it fair to say that when you deal with compliance, you deal with complicated statutes and regulations?

A That is correct.

Q Okay.

MR. RUKAVINA: Mr. Vasek, if you'll please pull up (garbled).

(Pause.)

BY MR. RUKAVINA:

Q Okay. Taking you back to Mr. Morris's questions, do you recall Mr. Morris asking you whether you believe that any of the trades that were being discussed were deceptive?

MR. MORRIS: Hold on one second, Your Honor. What exhibit is this?

THE COURT: I don't know. What is it?

MR. RUKAVINA: Can you hear me, Mr. Post?

THE WITNESS: They're asking a question as to what exhibit this is.

MR. RUKAVINA: Your Honor, this is not an exhibit. This is a Commission Interpreting Regarding Standard of Conduct for Investment Advisors, an SEC regulation in conjunction with 17 CFR 276.

THE COURT: Okay. How are we --

MR. RUKAVINA: So, Your Honor, these are the actual regulations.

THE COURT: I mean, it's -- okay. The answer to the question is it's not an exhibit. You have pulled up 17 CFR part 276. Is that what the answer is?

MR. RUKAVINA: Yes, Your Honor. And I haven't offered this as an exhibit.

THE COURT: All right.

MR. MORRIS: You have -- Your Honor, I don't know why this is being put up on the screen now. It's not an exhibit. It's not in the record like a couple of those that I had. I used the statute that he relied on to cross-examine him with the 206. I don't know what this is. I don't know if it's accurate. I don't know anything about it.

MR. RUKAVINA: Your Honor, this is a rule and regulation. This is not an exhibit. If it is an exhibit, I haven't moved to admit it yet. I'm going to use this to refresh his memory and explain why he believed that the actions were deceptive, a door opened solely by Mr. Morris.

MR. MORRIS: His recollection hasn't -- there's no need to refresh it yet. He hasn't even answered a question where he says, "I don't remember."

THE COURT: Okay. I sustain the objection here. I mean, you can ask him a question, but, again, it's kind of hard for us to tell what this is, actually. I mean,

Commission Interpretation Regarding Standard of Conduct for Investment Advisors. I mean, is this actually a -- I mean, it's not a statute. I'm not even sure it's a reg. It's --

MR. MORRIS: Okay.

THE COURT: I don't know what it is. So, --

MR. RUKAVINA: Your Honor, we'll lay a predicate later. First, let me ask some other questions.

BY MR. RUKAVINA:

Q Again, you recall that you were asked whether, pursuant to Section 206 of the Advisers Act, you believed the trades that have been discussed were deceptive. Do you recall?

A Yes.

Q Okay. And you answered that you believed that they were deceptive?

A Correct. I did.

Q As the CCO, do you have an understanding of what role, if any, conflicts of interest play in an advisor's duties under the Advisers Act?

A Yes.

Q Okay. What is your understanding?

A All -- all known material conflicts of interests need to be disclosed -- need to be disclosed by the advisor to the underlying investors.

Q Okay. And why, why do those conflicts of interests have to be disclosed?

A Because an advisor could have a view that may deviate from the underlying investors' view of how the portfolio could be managed and in contradiction to it.

Q And do you have an understanding as to whether, pursuant to your experience as the CEO [sic], the Advisers Act and the SEC regulations (garbled) it require an advisor to adopt the principal's goals as opposed to his or her own goals?

MR. MORRIS: Objection to the form of the question. Your Honor, he has not been offered as an expert. He shouldn't be permitted to provide -- this is -- this would be, at best, expert testimony. I asked him 30 different questions about his background. He's got no training. He's got no licenses. He's taken no special courses. He doesn't have anything except on-the-job training. This is not right.

MR. RUKAVINA: Your Honor, Mr. Morris got to ask yes-and-no questions all day, leading questions, and the witness was told that he could explain his answers. The Court told him that. And I am trying to explain his answer as to why he believed that these transactions were deceptive, especially because the allegation is that we willfully and intentionally violated the stay by sending letters that this witness authorized. So understanding his understanding is very important to Your Honor's determination of the actual --

THE COURT: Well, I sustain the objection.

MR. RUKAVINA: And Mr. Morris opened this door.

THE COURT: You can ask him why he thought the actions were deceptive, but he's starting to go into what may or may not be CFRs and conflicts of interest. No. This is going well beyond asking him, Why do you think it was deceptive? And I agree: It's straying into expert testimony.

BY MR. RUKAVINA:

Q Mr. Post, you are familiar with the December 22nd AVYA and SKY sales and transactions which you were asked about by Mr. Morris and that you previously have testified about, correct?

A Correct.

Q Okay. How are you familiar with those sales and transactions as they were occurring? How did you learn about them?

A There was some internal email correspondence. If I recall from memory, at the bottom it provided fill information that Jefferies provided to, I believe, Mr. Seery and others on the email. And then it kind of worked its way up to get the trades that had been executed administratively booked into the OMS.

Q Why did you get involved with those transactions?

A They were requesting that employees of HCMFA book those -- I'm sorry, Highland Capital Management Fund Advisors -- book those into the system. And those employees were not a party to the trade. I don't believe --

Q Well, let me pause you. Let me pause you. Those two employees, who were they?

A Joe Sowin and Matt Pearson.

Q Were they at that time employees of the Debtor?

A They were not.

Q Okay. So, how did you come to learn about this ask that those two employees book -- book it?

A I believe there was an email that was sent to me, or I was on it. I can't recall specifically.

Q Okay. And did you undertake any review as to whether those two employees should or should not do what was being asked of them?

A Once it was brought to my attention, I discussed with -- I looked at it. It looked like, pursuant to prior correspondence with -- that Joe Sowin made, he wasn't aware of the trades.

You know, I also had a discussion with K&L based off of -- our legal counsel based off of a prior letter that was sent, and just it didn't -- it didn't look right that they would be booking trades on behalf of the two Advisors that are named in the letters when they had nothing to do with it and weren't -- weren't a part of any of the pre-trade compliance checks, et cetera.

Q What is a pre-trade compliance check?

A Well, there's an electronic system, a -- or a management

system we have, the OMS, which is called Verda (phonetic). And generally, trades are entered into the system by the portfolio manager, and they then go through pre-trade compliance checks. And once those compliance checks are passed, they're then routed to the trading desk for direction or execution, where the executing brokers and the trading desk will then monitor that execution over the course of the day. And at the conclusion of the trading day, those trades, if they weren't already allocated, would be allocated, and then a trade would be sent to custodian prime brokers to identify the trades that occurred in the respective Funds for those -- or, on that day, and then they would then be dropped into the database and our -- the settlement team would kind of work to settle those trades or ensure that those trades were settled based off of the stipulated time frame for settlement on the trades.

Q So, in all that course of a transaction, what exactly was it that those two employees of the Advisors were being asked to do on behalf of the Debtor? What exactly were they being asked to do?

A To just book them in the system because they are trades that already have been executed.

Q Did you stop that?

A I believe I responded and said, you know, it -- they're employees of, if I recall, employees of one of the named

Advisors, and believe those trades are in the best interest of those Advisors, and separately, you know, the Debtor has designated operators/traders that should be able to enter those trades as well, aside from Mr. Sowin and Matt Pearson.

Q So can you think of any reason why Mr. Seery would ask your employees, as with his own employees, to book these trades?

A I believe based off of past practice.

Q Okay. But nevertheless, those two trades did not comply with internal compliance?

A They weren't run through the OMS. We try and route trades through the order management system because there's pre-trade compliance checks that can be performed, and it reduces any sort of back-end reallocation or trade errors that may occur as a result of, you know, trades being entered after the fact, because quantities could be, you know, referenced incorrectly or funds could be identified incorrectly.

Q Based on prior practices, have these internal policies been followed when perhaps employees of the Debtor asked employees of the Advisors to take a particular action in the course of a transaction?

A Yes.

Q When internal practices are not followed, what is your job? What are you supposed to do?

A When internal practices are followed, --

Q Are not followed.
A Oh. Not followed? To the extent that they're not followed, we would question, you know, number one, why weren't they followed? You know, we -- we try and have all trades booked in the OMS so that the necessary checks could be performed, and as I mentioned earlier, to avoid any reallocation or trade errors. So I would then question, you know, why was this done outside of the system?
Q And if you did not get an appropriate response back to your question, what are you supposed to do?
A If I didn't get an appropriate response, would, you know, research it further and elevate it to senior management and/or any of the board if it was ultimately an issue.
Q Are you supposed to stop trades or stop the process if you see something that you believe is not compliant with your obligations and the fiduciary obligations of the Advisors?
A Yes.
Q Have you done that in the past?
A Yes.
Q Have you done that frequently, or infrequently?
A I would say it's -- it's infrequent, but they do occur. For example, if a fund is trading in a security that it's not permitted to invest in based off of a prospectus limitation, it would get flagged in the OMS and we would then not permit the trade to go forward because it could cause the breach to

go further offsides or it could cause it to go offsides.
Q Okay. And these December 22nd trades, were they the type of, in your past experience, problematic trades like you have interfered or stopped or intervened to stop in other situations in the past? Do you understand my question? That was an inartful question. Do you understand it?
A If the question is because they were done outside of the system?
Q Yes.
A And repeatedly?
Q Yes.
A I would have raised the question with the trading desk or the portfolio manager as to why that's being done, because it was not in -- not consistent with how we instruct trades be booked.
Q Did Mr. Dondero, for these December 22nd transactions, tell these two employees not to book the trades?
THE COURT: Okay. Please repeat the question. It was garbled.
MR. RUKAVINA: Thank you, Your Honor.
BY MR. RUKAVINA:
Q For these December 22nd trades, did Mr. Dondero tell those two employees not to book the trades?
MR. MORRIS: I object, Your Honor. No foundation. This witness has no personal knowledge to testify to this --

to answer this question.

THE COURT: Overruled. If he knows.

THE WITNESS: I do not know.

BY MR. RUKAVINA:

Q Okay. Do you have a reason to believe that he did?

A I don't know. I just saw the email traffic and Mr. Sowin, I believe, was questioning the trades, you know, more in the sense that he wasn't aware of them. So, I don't -- I don't know what kind of conversations, what happened in the background, just that he -- he didn't recognized that rates.

Q Let me try it this way. You determined that these trade would have violated the Advisors' policies and procedures, correct?

A Yes, because they were done outside of the OMS.

Q Did Mr. Dondero tell you to come to that conclusion?

A He did not.

Q Did Mr. Dondero pressure you to come to that conclusion?

A He did not. He had indicated that there -- there are these trades, and you should take a look at it from a legal compliance perspective, which I did.

Q And you talked to K&L Gates?

A Correct.

Q And when Mr. Dondero told you to look at these trades, did he suggest to you in any way, shape, or form what you should conclude or decide to do, if anything, with respect to these

trades?

A I don't believe so.

Q Okay. Let's go back to that question about your view that some of what Mr. Seery was doing was deceptive under the 1940 Investors Act. When did you form that view?

A I believe it was after it was identified that there was not (inaudible) on certain of the trades that were entered into at the end of the November time frame, the SKY and AVYA trades.

Q And why did you form the opinion that those trades that Mr. Seery was attempting to do or had done were deceptive under the statute that Mr. Morris asked you about?

A It was pursuant to reviewing them and supplemental discussion. A review with the portfolio managers and then supplemental discussion with K&L be it from a (inaudible) perspective, through, you know, perform in the best interest of your clients, it was expressed that, at least with respect to preference shareholders, they were supposed to maximize value, and those sales, they're not really maximizing value.

And it was also identified that the Debtor was planning to liquidate the CLOs based off of a filing within the Court within a few-year period. And the investors -- or, the Funds that invested and the preference shareholders, or preference shares, had a longer-time view in those assets.

So the sales, coupled with the short duration, or the

anticipated, you know, two-year duration, didn't line up with the investment objective that they were seeking to maximize returns.

Q To your understanding and your experience, does the servicer of the CLOs owe fiduciary duties to anyone?

THE COURT: Okay. I cannot -- someone is flipping paper. Please stop flipping paper. Okay. Repeat your question, Mr. Rukavina.

MR. RUKAVINA: Thank you, Your Honor.

BY MR. RUKAVINA:

Q In your experience and in your knowledge, does the servicer of the CLOs owe fiduciary duties to anyone?

A They should, yeah, the underlying investors in the CLO, whether it be the Debtor or the equity holders.

Q Do the Advisors owe fiduciary duties to anyone?

MR. MORRIS: Your Honor, I'm sorry, I apologize. I really do move to strike. He's not a lawyer. There is no foundation. He's not here as an expert. There's no basis for this witness to be talking about who owes who fiduciary duties. I don't even think that's the law, what's just been stated.

THE COURT: Okay. I sustain.

MR. RUKAVINA: Okay.

BY MR. RUKAVINA:

Q Well, let me make it very easy, then. Do you have an

understanding as to whether Advisors subject to the 1940 Act owe a fiduciary duty?

A Yes.

Q Do you have an understanding of how a conflict of interest plays into a fiduciary duty?

A Yes.

Q What is your understanding?

A If there's a material conflict of interest, it should be disclosed.

Q And what did you conclude with respect to Mr. Seery and the Debtor once the Debtor stated that it will liquidate within two years?

A That's not the investment horizon that the underlying preference shareholders have, especially with respect to the underlying assets held in those CLOs. More or less, you're -- they're now put on a clock, and those preference shareholders may have a longer-term view on the underlying assets of those CLOs.

Q Let's move on to those December 22nd and December twenty -- well, let me strike that. You heard Mr. Seery testify that those December 22nd trades closed, correct?

A I did.

Q And did you independently look at whether that's true?

A I did.

Q And what did you conclude?

A They showed a sale in the -- on the intranet.
Q Okay. Let's move on to the December 22nd and December 23rd letters. Are you familiar with those letters from K&L Gates to counsel for the Debtor?
A I am.
Q And did you participate in preparing those letters?
A I did.
Q Okay. And I think Mr. Morris asked you and I think you testified you supported or agreed with the sending of those letters. Is that generally accurate?
A Yes.
Q Why? Why did you support sending those letters?
A It wasn't in the best interest of the Funds pursuant to discussions with the portfolio managers and the investment objectives that they were looking to seek any of those investment in the preference -- preference securities and CLOs.
Q Was that a purpose that you were trying to achieve by sending those?
THE COURT: Repeat the question.
THE WITNESS: Ah, --
THE COURT: Repeat the question.
BY MR. RUKAVINA:
Q Was that a purpose that you were trying to achieve by sending those letters?

A Yes. I believe there was something towards the end of one or both letters that said, to the extent, you know, transactions occur, if, for lack of better words, a courtesy heads up could be given to the Funds and the Advisor.

Q Did you intend in any way to intimidate the Debtor by authorizing or supporting the sending of those letters?

A No.

Q Did you intend in any way to violate the automatic stay by sending those letters?

A No.

Q Were you trying to engage the Debtor in a dialogue at that time as to what to do with these CLO management agreements?

A Yes. I believe that was stated at one -- at the end of one or both of the letters.

Q And I think Mr. Morris discussed with you that the Debtor sent back letters asking you to withdraw these two letters. Do you recall that discussion?

A Yes.

Q And do you recall saying that we never withdrew these letters, right?

A Correct.

Q Why did we not withdraw these letters?

A Because we don't believe that the trades that are being entered into are in the best interest of the shareholders -- *i.e.*, the Funds.

Q To your knowledge, did we ever, or did you ever, communicate to the Trustees or Issuers anything in the nature of instructing them to terminate the CLO management agreements with the Debtor?

A I did not.

Q To your knowledge, did anyone, for the Funds or Advisors?

A I don't believe so.

Q Did you or anyone to your knowledge communicate to the Issuers or Trustees that the process of removing the Debtor as manager should commence?

A I don't believe so.

Q Okay. To your knowledge, have any of the Issuers or Trustees undertaken any steps to remove the Debtor or terminate these contracts?

MR. MORRIS: Objection to the extent it calls for the conduct or knowledge of the Issuers.

THE COURT: Overruled. He can answer if he knows.

THE WITNESS: I don't believe so.

BY MR. RUKAVINA:

Q Had they, is that something that you would have expected them to inform the Funds of?

A Yes. The Funds would have received some type of notification if there was a new Advisor on the CLOs.

Q So, other than these two letters -- let me stop there. Did any discussion of trying to terminate these contracts

basically cease with the sending of these two letters and the Debtor's responsive letters?

A That's my understanding, yes.

Q Okay. And we never did file a motion for lift stay. Can you explain to the judge why we didn't file a motion for relief from the stay?

A It's my understanding that the intent was that the management of the CLOs was going to be heard in conjunction with the confirmation hearing.

Q And do you recall when that confirmation hearing was originally set for?

A I believe it was supposed to start today. Or tomorrow.

Q Well, wasn't it earlier in January? Around January 11th?

A Uh, I -- I don't recall specifically.

MR. RUKAVINA: Mr. Vasek, if we could pull up the Form CLO agreement. What exhibit is that?

(Pause. Counsel confer.)

MR. RUKAVINA: No, that's not.

THE COURT: Can I ask what we're about to start doing?

MR. RUKAVINA: Eight.

THE COURT: Can I ask what we are about to start doing?

MR. RUKAVINA: Your Honor, I apologize. I'm trying to find one of the CLO portfolio management agreements. I'm

trying to pull it up for you.

THE COURT: Okay.

MR. RUKAVINA: It should be in your binder.

THE COURT: All right. Well, --

MR. RUKAVINA: Where is it, Julian?

MR. VASEK: It should be 8.

MR. RUKAVINA: I'm sorry?

MR. VASEK: 8.

MR. RUKAVINA: Your Honor, it's Exhibit 8 in your binder.

THE COURT: Exhibit --

BY MR. RUKAVINA:

Q And Mr. Post, you have that in front of you, right?

MR. RUKAVINA: Mr. Vasek, if you'll go to Page 14, please. Section 14. Termination by the Issuer for Cause.

MR. VASEK: Okay.

MR. RUKAVINA: Your Honor, the contract speaks for itself, and I'm not about to read the contract to the Court. The Court can read. I want to ask him certain questions about this. And you'll note that the contract gives the requisite holders of voting preference shares certain rights.

MR. MORRIS: Your Honor, respectfully, the witness has testified that he hadn't seen any of these contracts for five or six years, until the lawyers asked him to look at it, and they told him which specific provisions to look at.

The document does speak for itself. Counsel should just make it part of his closing argument. There's no evidence that there's a quote/unquote Form CLO Management Agreement. And I would just respectfully suggest that this is better saved for closing argument.

THE COURT: Yes. What are we going to do here? He did not seem like he was an expert on these CLOs in his earlier testimony. He hadn't read much of them until recently. So where are we going with this?

MR. RUKAVINA: Well, Your Honor, the question, again, is -- can you hear me? The question again is, Are we going to be enjoined from exercising any rights in the future, so I would like to take the witness through the importance from a regulatory perspective and a fiduciary perspective of some of these rights. If Your Honor thinks that that's for closing argument, that's fine. But I will note that that Your Honor allowed Mr. Morris for some forty minutes to read prior testimony into the record.

MR. MORRIS: I'm happy to respond if Your Honor needs me to.

THE COURT: Go ahead.

MR. MORRIS: There is a complete difference, Your Honor. To read statements against interest, to read defense's own sworn statements that they made at a prior proceeding, as opposed to trying to get a witness who has admitted that he's

not familiar with these documents, to try to convince the Court that they said something that the witness doesn't have any personal knowledge or expertise about. It's completely different.

THE COURT: All right. I sustain the objection. You can make whatever argument you want in the closing arguments about whatever provisions of whichever CLO agreements justify actions. I guess that's where we're going.

MR. RUKAVINA: Then, if you could pull up Exhibit 78, and if Your Honor could turn to Exhibit 78.

THE COURT: All right.

MR. RUKAVINA: Is this a confidential -- Julian, what does it mean, it's confidential? 78. Is this confidential?

MR. VASEK: It says confidential on the --

MR. RUKAVINA: Your Honor, apparently this is a confidential document, so how does the Court want to proceed on this WebEx?

THE COURT: All right. We're stopping. We're stopping. We have protocols in place in this case, and people usually file motions to present things under seal or redactions. My patience is shot, so we're going to stop. Let's talk about where we go from here.

MR. MORRIS: If I may, Your Honor?

THE COURT: Yes.

MR. MORRIS: John Morris from Pachulski Stang --

THE COURT: Uh-huh.

MR. MORRIS: -- for the Debtor.

MR. RUKAVINA: We filed this under seal, right?

MR. MORRIS: We were --

MR. RUKAVINA: Oh, I thought we had.

MR. MORRIS: -- hoping that we would get this finished today, Your Honor, and the Debtor was really hoping to get a ruling before confirmation. But given all that's in front of us, including the contempt hearing next Friday, just a couple of days after the confirmation hearing, I think the Debtor at this point is prepared to agree, if it's okay with the Defendants' counsel, to push this to the following week, since the -- you know, with the understanding that everybody stipulate on the record that the TRO stays in place. And if we could have this particular motion heard, I guess, somewhere -- it's the week of February 8th, the Debtor would consent to that.

THE COURT: All right. Do we already have a --

MR. RUKAVINA: Your Honor, can the Court --

THE COURT: -- setting that week? Because I know we have confirmation, what, are we set for the 2nd, 3rd, and 4th? Three days next week.

MR. MORRIS: I believe -- yeah. I think it's just two, Your Honor. I think --

THE COURT: Okay.

MR. MORRIS: -- confirmation is the 2nd and the 3rd, and then I think the 5th is the contempt hearing. I'm not aware, but I don't -- I don't profess to know the entirety of the calendar. I'm not aware of anything that's on for the following week.

THE COURT: Does it make sense to continue this to the 5th? Because the issues are so overlapping here. I feel like it's been a contempt hearing half of today, actually.

MR. MORRIS: Yeah.

THE COURT: So, shall we just set it for -- is it Friday, the 5th?

MR. MORRIS: It is.

THE COURT: At 9:30?

MR. MORRIS: And I think that's a great idea, yeah. Yeah.

THE COURT: What do you want to say about that, Mr. Rukavina?

MR. RUKAVINA: Thank you, Your Honor. We're fine with that.

Let me just point out, so that if the Court is impatient or frustrated, we did move Exhibit 78 to be filed under seal. The Court did enter an order allowing it to be filed under seal. So that the Court doesn't think that somehow we were negligent in that.

But February the 5th works for us.

THE COURT: Okay. All right. So I have an unredacted clean copy up here, which, if and when I admit it, we will put it under seal in our exhibit room, or I guess our electronic exhibit room.

So, we'll come back on the 5th at 9:30. But I am not -- I am not done. Yes, I am frustrated. Yes, I'm impatient. I have asked myself "Why are we here?" so many times today. Why are we here? I mean, I've had this conversation before. I mean, we had a, as you know, a very lengthy hearing on the motion for a TRO or preliminary injunction against Mr. Dondero personally. And I think it was Mr. Morris who said, it's a little bit like Groundhog Day. You know, that was actually a more flattering way of describing it than I might have. I might have said this is reminding me of Albert Einstein's definition of insanity. You all know what I'm talking about? When you're doing the same thing over and over again and expecting a different result.

And, you know, no offense, Mr. Dondero, if you're still there listening, but that's what it feels like to me. I mean, it is -- it's the same thing over and over again. And we've spent very, very, very little time talking about the January 9th, 2020 corporate governance settlement agreement. Of course, it was mentioned extensively in the pleadings, at least by the Debtor. But, you know, I've heard all of this evidence today, and I'm going to hear more evidence,

apparently, on the 5th. But Paragraph -- was it 9? -- Paragraph 9 of the January 9th, 2020 settlement agreement. The order directed Mr. Dondero not to "cause any related entity to terminate any agreements with the Debtor."

And, you know, I thought to myself as I was reading, preparing for this hearing, that, you know, I seem to remember those words meant so, so much to me. And then this reply brief was filed by the Debtor at 6:00 or 7:00 o'clock last night, and it gave an excerpt of the transcript, the hearing where I approved this corporate governance settlement agreement, and I said, that language is so important to me because of my history in the *Acis* case, I want it in the order. I don't even -- I don't want it merely in the term sheet, and then, of course, the order cross-references, approves the term sheet. I want that in the order. Because, you know, I knew, even with this highly-qualified independent board of directors, and even with this very sophisticated Creditors' Committee with very sophisticated professionals monitoring everything that happened, and having not just the monitoring rights but the standing to pursue things, I knew, even with this great system that had been negotiated in the January term sheet, there was the possibility of things happening through Dondero-controlled entities indirectly. And so that's why we had that Paragraph 9. So, --

(Interruption.)

THE COURT: I don't know what that was I just heard, but someone needs to put me on mute.

So, I mean, we've heard a lot. We've heard a lot, but --

MR. DONDERO: Hello? Your Honor? Your Honor?

THE COURT: Okay. I --

MR. DONDERO: Hi. Jim Dondero.

THE COURT: Oh, okay. I'm still talking. I'm still talking. But I --

MR. DONDERO: Okay.

THE COURT: But I said --

MR. DONDERO: I'm sorry.

THE COURT: I said at the hearing on the preliminary injunction as to Mr. Dondero personally, do you remember what I said, I said life changed when you put your company in Chapter 11. And, you know, even if you had stayed on as president of the Debtor, life changed. Okay? Because you're a debtor-in-possession. You have to say, "Mother, may I?" to the Court. Creditors get to object to things. So things changed.

But things really, really, really changed, you know, they changed in October 2019, and then they changed dramatically in January 2020, when independent board members were put in place and you were taken out of management.

So, the reason I'm coming back to that concept is this: I've heard a lot about the preferred shareholders didn't like

the trades Mr. Seery was implementing, the sale of AVYA, the sale of SKY. They didn't like it. Well, I mean, I hate to say something flippant like tough luck, but really: Tough luck. Okay? We all know that with a company like this, with a company like Acis, it's complicated, right? Because you've got a fiduciary duty to your creditors to maximize value of the estate so creditors get paid in Chapter 11, right? But meanwhile, you know, you've got to have fiduciary duties, I don't know if it's directly to preferred shareholders or just to the CLOs. But whatever it is, you know, there may be differing views that individual preferred shareholders have. But Mr. Seery is in charge. The Debtor is in charge. You don't like it, I'm sorry, but he's in charge.

So, you know, I thought, am I going to come in here today and see all kinds of specific contractual references, where, I don't know, somehow you have an argument that you can control buys and sells? Of course, in this case, it would just be sells at this point. You know, no. I knew I wasn't going to see that. And I haven't.

So I don't know what I'm going to hear more on the 5th that is going to tilt me a different way, but right now, if I had to rule right now, this would be a total no-brainer to issue this preliminary injunction. Okay? I feel like it's been teed up almost like find Dondero in contempt, find these entities in contempt. What I'm here on today is whether I

should issue a preliminary injunction, and the December letters, the emails, the communications, they lead me to believe that this preliminary injunction is needed because someone doesn't understand that Mr. Seery is in charge and the preferred shareholders, the Funds, the Advisors, they don't have the ability to interfere with what he's doing in running the company.

And the threats of we're going to, you know, direct -- we may direct the CLO Issuer to terminate the Debtor: I mean, it's just -- there's no sound business justification for that. Okay? I don't know what we're doing, where we're going.

Mr. Dondero, I said to you in December, you know, I really wanted to encourage good-faith negotiations on your possible pot plan because I thought you wanted to save your baby. But the more I hear, the more I feel you're just trying to burn the house down. Okay? Maybe it's an either/or proposition with you: I'll either get my company back or I'll burn the house down. That's what it feels like. And I have no choice but to enter preliminary injunctions with this kind of behavior.

So, I'm very frustrated. I'm very frustrated. I don't know if anyone wants to say anything or we just end it on this frustrating note.

Mr. Rukavina, did you want to let your client speak, or no?

MR. RUKAVINA: Your Honor?

THE COURT: Not your client.

MR. RUKAVINA: No, but --

THE COURT: The client representative.

MR. RUKAVINA: Your Honor, I take issue with what the Court has said, but we did file a motion yesterday to file a plan under seal. It is -- Mr. Dondero, can you mute your phone? The Court should have seen that by now. It is a pot plan with much more cash consideration. We have discussed it with the Debtor and the Committee. We are in earnest negotiations. I have no reason to believe or disbelieve that we're close to a settlement.

But recall what I said at the beginning. We asked the Debtor to continue this hearing. We said, You have a TRO that ends February the 15th. Why are you doing this? Well, the Debtor did it to smear Mr. Dondero on a very carefully crafted record, without telling you the other half of it. And when I tried to have Mr. Post explain it, opposing counsel won't let me even tell you our views. So there is a competing plan. We want to try --

THE COURT: You tried to get him to testify about comments to CFRs when he has shown no expertise whatsoever --

MR. RUKAVINA: That's fine.

THE COURT: -- to permit that.

MR. RUKAVINA: And I understand, Your Honor. I don't

want -- Your Honor has made her evidentiary rulings. I'm not here to second-guess them.

I'm telling you that Mr. Dondero -- and more importantly, the other companies, *i.e.*, NexPoint -- we heard you loud and clear. We did not just send forward some cocktail-napkin term sheet. I spent the weekend and Friday preparing a comprehensive plan and disclosure statement. I hope that the Court will allow it to be filed under seal. Exclusivity has expired. I am asking to file it under seal only.

THE COURT: Tell me what utility that has. What utility does that have if you don't have one plan supporter? I mean, where are we going with this? I have invited, I have encouraged, I have directed good-faith negotiations with the Committee. If you don't have the Committee on board, what utility is there in allowing you to file a plan under seal?

MR. RUKAVINA: Well, if it's filed under seal, Your Honor, then, really, no one is going to be prejudiced or hurt. But we have not been told --

THE COURT: Then why --

MR. RUKAVINA: -- from the Committee --

THE COURT: Then why are we doing it? Help me to understand the strategy. Maybe I'm just naïve.

MR. RUKAVINA: Your Honor, there is no strategy and the Court is not naïve. Pursuant to an agreement of the Committee and the Debtor, I sent that draft plan to them over

the weekend, and they agree it's not solicitation. It has not gone to the creditors. No one has seen it.

The reason why we sent it to the Committee and the Debtor was to foster ongoing negotiations. We had negotiations last night. The Committee and the Debtor had negotiations last night. We've been promised a response in the next couple of days, and we have a follow-up meeting scheduled for Thursday.

The reason why I wanted the plan filed under seal is so that there is a record of what is being discussed so the U.S. Trustee can see it, if she wants to, and so that other key constituents, if they want to or have a reason to, can see it.

But I agree with you: That plan ain't going nowhere if we don't have some material creditor support. We won't know that for a couple more days.

So my only point in saying this to Your Honor is that we are working earnestly, we are increasing our consideration, we have heard you loud and clear, and all the parties are negotiating.

Again, we did not want this hearing to happen today because it's a step backwards from negotiations, not a step forward. Thank you.

MR. POMERANTZ: Your Honor, may I be heard?

THE COURT: Go ahead, Mr. Pomerantz. Go ahead.

MR. POMERANTZ: Mr. Rukavina sent us over the plan, and we had no problem with it being sent to the Committee. He

then sent us over the motion. Now, aside from the fact that the motion contains some statements which the Debtor strongly disagrees with, with respect to the ability of administrative claims or other claims to be assumed, but putting that aside, we were concerned that the filing of a plan on the docket, unsealed, would be a distraction.

Having said that, we also saw utility in the plan being put in the hands of the largest creditors so that they can evaluate what was being proposed.

We told Mr. Rukavina we have no problem if the plan was filed under seal, stayed under seal until after confirmation, and then, in exchange, we would agree to something that we don't think we had to agree: That he could send the plan to UBS, to Acis, to Redeemer, to Meta-e, to HarbourVest, and Daugherty. Essentially, all the players in the case. Mr. Rukavina said he would consider that, and then just filed his motion.

We don't have any problem with him doing that still, sending it to the six creditors so they can look at it. We don't think it should be unsealed on the docket.

And the discussion of status of negotiations, Your Honor, as we've told you many times before, we would love there to be a plan. We would love there to be support of a plan. Mr. Dondero asked to approach the board and speak to the board yesterday. We heard him out. The plan essentially is the

same document and the same term sheet, I think, that has been floating around for several weeks.

Having said that, we said, We are not going to stand in the way of Mr. Dondero and the Creditors' Committee. And if the Creditors' Committee and Mr. Dondero have a meeting of the minds, if there's any desire of them to have more time, we would be supportive of it. I'll let Mr. Clemente respond as to whether there's any negotiation -- (echoing.) But when Mr. Rukavina said that last night there were negotiations between the Debtor and Mr. Dondero, that's just not accurate. We, we look at ourselves as the honest broker. But at the end of the day, as Your Honor has remarked many times throughout this case and just remarked a few moments ago, unless the Creditors' Committee supports this plan, it is DOA. And we have communicated that several times to Mr. Dondero and his team.

So, I just wanted to speak to correct the record. We're, again, supportive of a plan if there can be one. But at this point, we haven't seen anything, the parties coming any closer or any more negotiations, and we just have to get confirmed sooner rather than later (echoing), prepared to go forward.

MR. CLEMENTE: Your Honor, it's Matt Clemente at Sidley. I'm happy to make some comments to Your Honor, --

THE COURT: Okay.

MR. CLEMENTE: -- if you -- if you wish.

THE COURT: Please do.

MR. CLEMENTE: I think it's fair to say that the Committee believes the plan needs to go forward next week, Your Honor. We have, of course, taken your direction very seriously, and we very seriously consider all of the communications we get from Mr. Dondero. There exists still a material value gap in what is being offered under Mr. Dondero's plan, as well as a quality of the value.

So, Your Honor, while we continue to consider the plan and what we receive from Mr. Dondero, I do not want to leave Your Honor with the impression that the Committee feels like we are close to an agreement, and we anticipate going forward with the plan next week.

That being said, we of course will respond to Mr. Dondero as we review the plan, but as I sit here today, I don't believe that we are close. But, again, the Committee will continue to review it, and we should anticipate going forward with confirmation next week.

THE COURT: All right. So, you don't have any problem with the plan being filed under seal?

MR. CLEMENTE: Your Honor, we -- the Committee does have the plan, and I guess I'm not sure I'd see the point of having it filed it under seal. I think it serves to confuse issues. But, you know, hearing what Your Honor said earlier, I don't think we need to continue to bring different fights in

front of Your Honor, so I'm not sure that I see necessarily the harm in a plan being filed under seal, again, with the idea that, you know, why bring -- continue to bring fights to Your Honor if we don't need to?

THE COURT: All right.

MR. CLEMENTE: But what I do think is clear, Your Honor, that I do want to express to you is that the representations in that motion the Committee do not believe are accurate. We do not believe that there's been a significant value increase. We do not believe that we are close. That would be the point that I would make in connection with a response to that motion. So, but in terms of filing it under seal, I'm not sure the Committee has a strong feeling that that should not happen.

THE COURT: Yes.

MR. RUKAVINA: And Your Honor, very quickly, --

THE COURT: The words --

MR. RUKAVINA: -- I never represented that we're close.

THE COURT: The words I remember in the motion were significant value increase, something to that effect. But also more recovery than the plan that's on file.

(Echoing.)

THE COURT: So I was kind of darn curious to see it just for that.

MR. RUKAVINA: And Your Honor, obviously, because there's many people on this call, I don't want to run afoul of any kind of procedures. I'd be happy to walk Your Honor through, but I can't, not with 90 people on the call.

THE COURT: Right.

MR. RUKAVINA: I did not represent that we're close to a settlement in that motion, and I did not send the plan to those people that Mr. Pomerantz mentioned.

So, right now, the Committee, the Debtor, and the employees, because they requested it after Mr. Pomerantz approved it, have what I would like to file under seal. I'm not suggesting here today that it go any farther than being filed under seal, but at least it be there for some record.

THE COURT: Well, didn't you -- did I dream this? -- didn't you say that there would be something like 48 hours for people to object or then it would be filed not under seal? Did I dream that?

MR. RUKAVINA: Your Honor, that was my proposal, and Your Honor can certainly reject that. Mr. Pomerantz asked that the plan should never be unsealed pending confirmation of the Debtor's plan. I have a different proposal. Your Honor will rule and we'll comply with Your Honor's ruling.

MR. DONDERO: Jim Dondero here. Can I have two -- two quick minutes and just say two quick things?

THE COURT: Well, only if your counsel permits it. I

don't want to get in --

MR. RUKAVINA: I just don't -- yeah. Mr. Dondero, if you would please just not describe the substance, the economic substance of our proposed plan, not with so many people on the line.

MR. DONDERO: Sure. I just want to make two quick points. I couldn't apologize more for taking the Court's time today. It wasn't our 'druthers. You heard, I think, at least five or six hours from the Debtor. You never once heard them say that their activities didn't violate the Advisers Act. And they never once said that violating the Advisers Act wasn't a big deal. You know, they never said that.

What they tried to say, oh, we have these other contracts. Let's try and turn this into an injunction against Dondero interfering. But they never -- they never denied that Dondero and the NexPoint team was trying to do what was in the best interest of investors and that they had violated the Advisers Act.

I think, in normal course, each side would have had an expert and you could have opined on whether it was a violation of the Advisers Act, but they know they did something wrong so they're trying to make it an injunction against me. Okay. That's all I have to say about that point.

As far as the alternative plan, Your Honor, we heard you loud and clear. And the economics that we put forward, I

can't talk them about specifically, but they're at least 20 percent better than what the Debtor has put forward as far as a plan. And what we put forward is elegant, it's simpler, it treats the employees fairly, it gives the business continuity, it gives investors continuity, and it's not just a harsh, punitive liquidation that's going to end up in a myriad of litigation.

We're paying a premium, it's a capitulation price, to try and get to some kind of settlement. And I encourage you to look at it. It's elegant. It's straightforward. It's simple. And now that you've encouraged and gotten us up to a number that's well in excess of the Debtor, maybe a little pressure on other people to treat employees fairly, maybe not liquidate a business that's important in Dallas, that has been a big business for a number of years, doing enormous good things for a lot of people.

You know, we went into bankruptcy with $450 million of assets and almost no debt. And we've been driven into the ground by the process. And then the plan is to just harshly liquidate going forward. I -- I -- it's crazy. I don't know what else to do to stop the train other than what we've offered.

THE COURT: All right. Well, I hear what you're saying, and I do, just because -- I don't know if you left the room or not, but we did have discussion of Section 206 of the

Investment Advisers Act today. It was put on the screen. Mr. Post was asked what was unlawful as far as what had happened here, what was going on here, what was fraudulent, deceptive, or manipulative, in parsing through the words of the statute. And he said Mr. Seery engaged in deceptive acts because he wasn't trying to maximize value. Okay? I'm not an expert on the Investment Advisers Act, but I know that that was not a deceptive act.

And so I'll allow the plan to be filed under seal, but it's not going to be unsealed absent an order of the Court. Okay? So we'll just leave it at that for now. And while I still encourage good-faith negotiations here, I've said it umpteen times, where you're tired of the cliché, probably: The train is leaving the station. And if you want the Court to have patience in the process and if you want the parties to cooperate in good faith, it might help if we didn't have things like Dugaboy and Get Good Trust filing a motion for an examiner 15 months into the case.

I mean, it feels to me, Mr. Dondero, whether I'm right or wrong, that it's like you've got a twofold approach here: I either get the company back or I burn the house down. And I'm telling you right now, if we don't have agreements, --

MR. DONDERO: That's not true.

THE COURT: -- if we don't have agreements and we come back on the 5th for a continuation of this hearing and a

motion to hold you in contempt, you know, I'm leaning right now, based on what I've heard so far, and I know I haven't heard everything, but I'm leaning right now towards finding contempt and shifting a whole bundle of attorneys' fees. That, to me, seems like the likely place we're heading.

I mean, I commented at the December hearing on the preliminary injunction against you personally that it had been like a $250,000 hearing, I figured, okay, just guesstimating everybody's billable rate times the hours we spent. Well, here we were again, and I know we've got all this time outside the courtroom preparing, taking depositions. I mean, what else is a judge to think except, by God, let's drive up administrative expenses as much as we can; if we can't win, we're going to go down fighting? That's what this looks like. Okay? So if it's not really what's going on, then you've got to work hard to change my perceptions at this point.

MR. RUKAVINA: Your Honor, I hear everything what you're saying, and I'm going to discuss it very bluntly with my clients. But we're being asked not to exercise contract rights in the future. This is not a contempt hearing. And Your Honor, we did ask and offered the estate a million dollars, found money, plus to waive almost all our plan objections, if they would just put this case on pause for 30 days.

So we are trying. We are trying creative solutions here.

We know that the train is leaving. We've put our money where our mouth is. We will continue trying. But Your Honor, this is not a contempt proceeding, and my clients are not Mr. Dondero. You've heard they're independent boards.

MR. POMERANTZ: I can't leave that last comment without a response. Yes, there was an offer of a million dollars, by an entity that owes the estate multiples of that. So they are offering to pay us something that they already owe us. So Mr. Rukavina continues try to do this. We will not stand for it.

MR. RUKAVINA: That is not a fair statement, sir. I misrepresented nothing. We were offering you a million dollars, with no conditions, earned upon receipt, with no credit, no deduction for any of our liability. So you're free to say no, sir, but you're not going to tell the judge that I misrepresented something.

THE COURT: All right.

MR. POMERANTZ: Should tell the Court --

THE COURT: You know what?

MR. POMERANTZ: -- that that entity owed the Debtor.

THE COURT: You know what? You know what? I am more focused on, Mr. Rukavina, your comment that this Court can't enjoin your clients from exercising contractual rights when, again, in January of 2020, the representation was made and it was ordered, "Mr. Dondero shall not cause any related entity

to terminate any agreements with the Debtor." Okay? That was -- go back and look at the transcript. That was so meaningful to me.

We were facing a possible trustee. And that's what I did in the *Acis* case. Okay? I had a Chapter 11 trustee. And it was not a perfect fit, to be sure. But it is where we were heading in this case, had the lawyers and parties not negotiated what they did. That was a very important provision, convincing me that, you know what, I think the structure they've got will be better than a trustee. And it has, for the most part. But the fees have gone out the roof, and I lay that at the feet of Mr. Dondero, for the most part. Okay? We have a bomb thrown every five minutes by either him personally or the Dugaboy or the Get Good Trust or the Funds or the Advisors or I don't know who else. Okay?

So the train is leaving the station, unless you all come to me and say, okay, we've maybe got a -- Mr. Pomerantz's word -- grand solution here. Okay? If you get there in the next few days, wonderful. Okay? But I don't know what else to say except I'm tired of the carpet-bombing, and if I had to rule this minute, there would be a huge amount of fee-shifting for what we went through today, for what we went through in December, for the restriction motion that, after I called it frivolous, the lawyers were sending letters pretty much regurgitating the same arguments. All right. So, not a happy

camper.

But upload your order on the motion to seal the plan. And, again, it's not going to be unsealed absent a further order of the Court. And if you all come to me next week and say, hey, we've got something in the works here, okay, I'll consider unsealing it and letting you go down a different path. But I'm not naïve. I feel like this is just more burning the house down, maybe. I don't know. I hope I'm wrong. I hope I'm wrong. But all right. So I guess we'll see you next week.

MR. POMERANTZ: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. We're adjourned.

MR. RUKAVINA: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 6:08 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 **01/28/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

INDEX
Page 2

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
	Monday, March 22, 2021
	9:30 a.m. Docket
Debtor.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 20-3190-sgj**
Plaintiff,	PLAINTIFF'S MOTION FOR ORDER REQUIRING JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO [48]
v.	
JAMES D. DONDERO,	
Defendant.	

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

WEBEX APPEARANCES:

For the Debtor/Plaintiff:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For Defendant James D. Dondero:	John T. Wilson Bryan C. Assink BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900

Dondero Ex. 15

APPEARANCES, cont'd.:

For Scott Ellington and Isaac Leventon:	Debra A. Dandeneau BAKER & MCKENZIE, LLP 452 Fifth Avenue New York, NY 10018 (212) 626-4875
For Scott Ellington and Isaac Leventon:	Michelle Hartmann BAKER & MCKENZIE, LLP 1900 North Pearl Street, Suite 1500 Dallas, TX 75201 (214) 978-3421
For Scott Ellington and Isaac Leventon:	Frances A. Smith ROSS & SMITH, P.C. Plaza of the Americas 700 N. Pearl Street, Suite 1610 Dallas, TX 75201 (214) 593-4976
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 - MARCH 22, 2021 - 9:39 A.M.

THE COURT: We have a setting in Highland Capital Management, Case No. 20-3190. It's an adversary. We have Plaintiff's Motion to Hold Mr. James Dondero in Civil Contempt of Court.

Let's get lawyer appearances to start out with. Who do we have appearing for Highland this morning?

MR. MORRIS: Good morning, Your Honor. It's John Morris from Pachulski Stang Ziehl & Jones on behalf of the Debtor.

THE COURT: Good morning. All right. And who is appearing for Mr. Dondero's legal team?

MR. WILSON: This is John Wilson, Bonds Ellis Eppich Schafer Jones, for Mr. Dondero.

THE COURT: All right. I know we have lots of other observers on the video, but those are the only appearances I will take for this matter.

All right. Well, let's talk about some housekeeping matters before we get underway. Just to be clear, the motion --

MS. SMITH: I can't hear.

THE COURT: Who says they can't hear? All right. Can everyone hear me?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. Mr. Wilson, you can hear me okay?

MS. DANDENEAU: Excuse me, Your Honor. This is Debra Dandeneau from Baker McKenzie. I believe that our local -- our co-counsel, Ms. Smith, wanted to make an appearance because we will be participating in this hearing, and I believe she's the one who's having the audio issues. Sorry to interrupt.

THE COURT: All right. Now, well, first, Ms. Smith, can you hear me okay?

(No response.)

THE COURT: All right. Ms. Dandeneau, remind me who your clients are and what their role is in this matter.

MS. DANDENEAU: Your Honor, our clients are Mr. Leventon and Mr. Ellington, at least in this matter. And they have been -- they've -- they were requested to appear as witnesses at this hearing. And so we are appearing to represent them in connection with this hearing. By agreement with the Pachulski firm, we're voluntarily producing them. We are appearing -- I'm here. My partner, Michelle Hartmann from Baker McKenzie, is here. Ms. Smith is here -- unfortunately, without audio.

And we do have an agreement with the Debtor that, among other things, they are -- they are not parties to this proceeding. We are producing them voluntarily. But we do have an agreement with the Pachulski firm that we will be permitted to at least ask questions on redirect of these

witnesses, and just wanted to make that clear, why we are here and why our -- and Mr. Ellington and Mr. Leventon are appearing voluntarily in this matter.

THE COURT: All right. Well, thank you, Ms. Dandeneau. Hopefully, Ms. Smith will get her audio working here shortly.

So I guess I should ask at this point, are there any other attorneys in a similar posture that want to make an appearance before we get started?

All right. Well, then let me get going with some preliminary housekeeping matters. I'm noting for the record that this motion asking the Court to hold Mr. Dondero in contempt of court was filed January 7, 2021, and the order that Mr. Dondero is alleged to have violated is a December 10, 2020 TRO the Court issued in this adversary proceeding, a short three-page order.

So what I want to clarify at the outset is this. There's been a lot of activity in the adversary. For example, on the very day after this motion to hold Mr. Dondero in contempt was filed, the Court issued a preliminary injunction, okay, in other words, the follow-up to the TRO, on January 8th. So sort of a weird posture, you might say. We're having a hearing now, over two months later, on a motion to hold Mr. Dondero in contempt of the TRO from December 10th, even though we've subsequently had a preliminary injunction.

I'm just clarifying that point to make sure our evidence is carefully tailored here today. I think it would only be evidence for activity between December 10, 2020 and January 7, 2021, because, again, you know, order entered December 10th, motion to hold Mr. Dondero in contempt filed January 7th. So this doesn't pertain to any alleged violations of the preliminary injunction after it was issued on January 8th.

So, with that, I will allow opening statements. And if you have anything to clarify about what the Court just said, if someone views this any differently, please let me know in your opening statements.

All right. Mr. Morris, you may proceed.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for the Debtor. Let me begin by saying you have it exactly right.

THE COURT: Okay.

MR. MORRIS: We are only going to put forth evidence of violations of the TRO that took place between December 10th and the day that the preliminary injunction was issued on January 8th. So it's a very short 29-period -- 29-day period, and that really is what we're focused on here today.

As Your Honor just alluded to, on December 10th the Debtor obtained a TRO against Mr. Dondero. The TRO was based on uncontroverted testimony, including written threats to Mr.

Seery and Mr. Surgent. It included evidence of interference with Mr. Seery's trading activities as the CLO manager. And so that happened on December 10th.

The TRO, Your Honor, is very clear. It is completely unambiguous. If Your Honor will recall, on December 10th you actually read out word for word of the operative portion of the TRO and you made assessments with respect to every provision in it as to whether or not it was clear and unambiguous and whether or not it was reasonable. And after that painstaking analysis, Your Honor signed the order.

In their opposition, Mr. Dondero now asserts -- and this is said several times -- the exact opposite. He claims not to know what conduct was prohibited. This is just not credible. We are going to go through the TRO as applicable to the violations that the Debtor is alleging here and we will show that there is no room for debate as to what the TRO provided and how his conduct was in violation of those very clear and unambiguous provisions.

Mr. Dondero makes much in his opposition papers of the clear and convincing evidence standard, Your Honor, and they suggest that it's such a high hurdle we can't possibly meet that here. Your Honor, the evidence that we will present today doesn't prove that Mr. Dondero violated the TRO by clear and convincing evidence. It proves it, not that we have to, beyond reasonable doubt. Okay? There is no doubt that he

violated the TRO in more than a dozen ways, and we're going to prove that to you today.

Again, we don't have to meet that high standard, but clear and convincing evidence is easy. Why is it easy? It's easy for two very simple reasons. Mr. Dondero has already admitted to certain of the violations, and you are going to see documents today that say what they say, their meaning is unambiguous, you will see the parties to the communications, you will see the interference with the business, you will see -- there is just no room for debate. It is not clear and convincing. It's to a certainty that he violated the TRO more than a dozen times.

Mr. Dondero claims repeatedly in his papers that he substantially complied with the TRO. I don't know of any law, any case that says that the Court is supposed to overlook violations of a TRO if the person against whom it was entered is otherwise in substantial compliance, but it's really irrelevant. He did not substantially comply with anything. The fact is that, despite being in place for only 29 days, we are going to present evidence today of 17 specific violations that are beyond dispute. Seventeen violations in just 29 days. The notion that he was in substantial compliance is not credible.

I've got a short deck, Your Honor, that I just want to go through with the Court so that I can preview the evidence that

we're going to present today. And if Ms. Canty can just put up the first page of the deck.

So, I don't know that the evidence is going to come in in exactly this order, but the TRO states in Section 2(c) that Mr. Dondero is enjoined, quote, from communicating with any of the Debtor's employees except as it specifically relates to shared services. It is a blanket prohibition on communicating with the Debtor's employees unless it relates to shared services. Not ambiguous. Pretty clear. The conduct couldn't -- right? Put yourself in Mr. Dondero's position. You have been ordered by a court of law not to communicate with the Debtor's employees unless it relates to shared services.

And so if you read the opposition, you'll see all the different kinds of excuses as to these communications. You'll see that they talked about the pot plan. There's nothing in the TRO that allowed Mr. Dondero to speak with any of the Debtor's employees about the pot plan. And he knew that and his lawyers knew that. And how do you know they knew that? Because on December 16th, just six days after the TRO was entered into, they filed a motion at Docket 24 seeking to modify the TRO to allow Mr. Dondero to speak directly with the independent board about a pot plan. Right? He knew he couldn't speak to anybody about the pot plan. He wanted to speak with the board about the pot plan.

If he thought that the TRO allowed him to speak with the

Debtor's employees about the pot plan, why didn't he think that it was -- allowed him to talk to the independent board about the pot plan?

He withdrew that motion, Your Honor, but that's -- that was his state of mind. He knew he couldn't do that.

But here's the thing, Your Honor. None of the communications that we're going to be -- put before you today have anything to do with the pot plan. So not only is discussion about the pot plan not permitted, it's not even -- it's not even relevant to today's discussion. But it's in their papers.

They also put in their papers that somehow these communications were authorized. Other than what Mr. Dondero may say, there will be no evidence of any kind that the Debtor authorized any of the communications. In fact, Mr. Seery is going to testify and he will tell Your Honor that he did not only not know of these communications, but had he known of them, whether there was a TRO or not, he would have fired the employees on the spot. And we're going to see the communications, and Your Honor can form your own judgment as to whether or not an employer, particularly an employer in bankruptcy, should tolerate the communications that we're about to look at.

Shared services. You might hear, oh, oh, these communications were about shared services. They will never be

able to prove that because they have not put on their exhibit list any shared services agreement. And why don't they have a shared services agreement on their exhibit list? Because Mr. Dondero is not party to one. He is not party to one. The lawyers at Bonds Ellis do not represent an entity that was party to a shared services agreement. Doug Draper, who you will see on some of these emails, does not represent an entity who was party to any shared services agreements. There is no exception in the TRO for the communications that we will look at.

Can you go to the next slide, please?

Here are 13 separate communications that we're going to go through today that included Mr. Dondero and one of the Debtor's employees or Mr. Dondero's lawyers and one or more of the Debtor's employees. They cover topics. The first three relate to the Bonds Ellis firm's request of Mr. Ellington to provide a witness who was going to testify on behalf of Mr. Dondero against the Debtor. There's communications about a common interest agreement that was going to be between and among, among others, Mr. Dondero and certain of the Debtor's employees. There's communications about the UBS appeal of the Redeemer 9019 settlement and the HarbourVest settlement. There's -- there is communications where Mr. Dondero asks Mr. Ellington to provide leadership in the coordination of all of the lawyers representing Mr. Dondero's interests.

There's more. We're going to go through these in detail, Your Honor, but there's 13 different communications that took place in just the two weeks after the TRO was entered into. Every single one of them -- these are not technical violations. This is not Mr. Dondero saying hello to an employee in the hallway. This is not Mr. Dondero asking about somebody's, you know, family. Every single one of these communications is adverse to the Debtor. Adverse to the Debtor's interests. And the Debtor knew about none of them.

Go back to the first slide, please.

The automatic stay. Section 2(e) of the TRO prohibits Mr. Dondero from otherwise violating Section 362(a) of the Bankruptcy Code. Section 362(a)(3) states that the filing of a bankruptcy acts as, quote, to prevent any act to exercise control over the property of the estate. There can't be anything ambiguous about a TRO that says don't violate the automatic stay. If there's an ambiguity in that provision, there must be an ambiguity in Section 362(a). And I submit, Your Honor, there's no ambiguity in Section 362(a)(3) that says you are prohibited from exercising control over property of the estate. But that's exactly what Mr. Dondero did, not once, not twice, but three times in the short 29-day period following the entry of the TRO.

Can we go to the third slide, please?

As Your Honor may recall from the preliminary injunction

hearing, Mr. Dondero's cell phone that he admitted was the company's property was thrown in the garbage. So that's stay violation one. I remember Mr. Lynn kind of flippantly saying he offered to pay the $500, but he completed missed the point then and I think they continue to miss the point now. Because the second stay violation was the tossing in the garbage of the Debtor's text messages.

The Debtor, for years, right -- Mr. Dondero, this is his baby, he ran this company -- they had an employee handbook. The employee handbook were the company's policies that guided and dictated the conduct of its employees. And they have a provision in there, and we're going to look at it carefully with Mr. Dondero. They had an option where the company might subsidize some of the phone bill if employees participated. But importantly, Your Honor, on this slide is an excerpt from Page 13 of the handbook. It'll be Debtor's Exhibit 55. And it says, regardless of whether the employee chooses to participate in the policy, right -- this is for people who had their own phone, not even ones that were paid by the company -- this says specifically all text messages, quote, sent and/or received related to company business remain the property of Highland.

There's that word property again, right out of 362(a)(3). Property. Do not control the Debtor's property. All employees, including Mr. Dondero, were told that text messages

related to company business shall remain the property of Highland.

Mr. Dondero knew this. How do we know that Mr. Dondero knew this?

Let's go to the next slide, please.

Mr. Dondero is going to tell you, because it's going to be in evidence, that periodically each year Mr. Surgent, as the chief compliance officer, had certain senior employees fill out certifications. On the screen is an excerpt from Mr. Dondero's certification done in early 2020. And in that certification, he says, among other things, quote, I have received, have access to, and have read a copy of the employee handbook and I am in compliance with the obligations applicable to employees set forth therein.

So this is his certification that he understands that text messages are the Debtor's property -- to the extent that they relate to company business, admittedly. And he knew long ago that the U.C.C. wanted his text messages. How do we know that? Because he filed a pleading and he told Your Honor that.

If we can go to the next slide, please.

If Your Honor will recall, last summer the U.C.C. made a motion to compel the production of documents. They sought to get emails and ESI from nine custodians. Mr. Dondero's lawyers filed a response to that motion. On the screen now is

Paragraph 3 from Docket No. 942, which is Debtor's Exhibit 40 for this purpose. And in Mr. Dondero's own pleading to the Court, he tells the Court the Committee seeks the ESI from nine different custodians, who include the Dondero. The Committee has requested all ESI for the nine custodians, including text messages.

So, so Mr. Dondero knew. Certainly, his lawyers knew. He knew in July that the U.C.C. wanted the text messages. The employee handbook provided that they're the Debtor's property. He certified that he understood that. He told the Court that he was aware the U.C.C. wanted Mr. Dondero's text messages.

The TRO is entered into, is entered by the Court during the afternoon of December 10th, and later in the evening we know the phone still exists. How do we know that? Again, not clear and convincing evidence, beyond a reasonable doubt, because if we go to the next slide, certainty. Forget beyond a reasonable doubt. Certainty. At 6:25 p.m., Mr. Dondero is told, on the day that the TRO is entered into, that the phone exists.

The phone doesn't exist now. It was thrown in the garbage. Mr. Dondero doesn't know how, why, who, when, what. He had the phone. He knew it was -- it contained the Debtor's text messages. He knew the U.C.C. wanted them. And the phone doesn't exist today.

Call it spoliation. Call it a violation of 362(a).

There's no question that this is a violation of the TRO.

The third way he violated the TRO, Section 2(e) under 362(a)(3), is by entering the Debtor's premises without permission. Now, I will admit and Mr. Seery will probably tell Your Honor that if this was the only thing that Mr. Dondero did, you know, maybe it wouldn't be a big deal. But it's not, and it's consistent -- we're seeking to hold him in contempt today, Your Honor, but here's the thing. He holds the Debtor in contempt. He holds this Court in contempt. He could not care less what anybody has to say. He will do what he wants. And how do we know that? How do we know that, that this is not a gotcha thing? Because we sent a letter to him.

Can we go to the next slide, please?

This is going to be in evidence. It's going to be at Exhibit 12. You will see the letter that we sent on December 23rd, while the TRO is in effect, where we gave him seven days before we were evicting him. We were evicting him because the Debtor believed he was interfering with the business, but the Debtor didn't need a reason, frankly. But they gave notice. Not only did they give notice of eviction, look at what they told Mr. Dondero. Any attempt by Mr. Dondero to enter the office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass.

We told him. He knew that. And yet what does he do? He waltzes right into the Debtor's offices right after the new

year to give a deposition. If you read carefully Mr. Dondero's response to the Debtor's motion here, he says, well, there was nobody in the office, like -- he says he used his judgment. He thought it was okay. They even make the argument that maybe the shared services allowed this, the shared services agreement.

Again, there's no shared services agreement. Mr. Dondero's not a party to a shared services agreement. But let's remember what the purpose of the exercise was. He went to the office to give a deposition in connection with a motion for a preliminary injunction against him personally. How could this -- every time you hear this shared services, remember -- ask yourself, where is the agreement, how do I know, and how could this possibly relate to shared services?

And Mr. Seery is going to tell you he's not going to be able to say, oh, I need $10 or $100 or I can quantify the damage. He's going to tell you, Your Honor, that this and all of the communications that we looked at, he just completely undermined his authority. They undermined the Debtor. They created -- because everybody knows that Mr. Dondero was evicted from the office. But he walks right in. And he's creating -- this is what Mr. Seery will tell you -- noneconomic harm that the Debtor has suffered by Mr. Dondero's unmitigated arrogance and contempt that he has for the Debtor.

The Debtor is a company in bankruptcy. They have -- they

have asked for your resignation. They have sought and obtained a TRO. They have evicted you from the offices. They told you that if you come back we will treat it as trespass. He is in contempt of the Debtor, of the TRO, of this Court. He could not care less, Your Honor. And that's really why -- that's why we're here. That's what all of this shows.

Contempt. I've got more.

Can we go back to the first page, please?

Section 3(a) of the TRO enjoins Mr. Dondero from causing, encouraging, or conspiring with any entity owned or controlled by him to engage in any of the prohibited conduct. And the prohibited conduct includes interfering or otherwise impeding the Debtor's business.

Now, you remember, when we got the TRO, one of the things that happened -- and I'm not saying that this is a violation of the TRO, I'm just trying to provide some context, and you'll hear it from Mr. Dondero himself -- one of the reasons we got the TRO is, remember about Thanksgiving, he interfered with Mr. Seery's attempt to sell AVYA and SKY stock on behalf of the CLOs, right? And that's where he made the threat to Mr. Surgent, right? So, --

And go to the last slide here.

He does the exact same thing on December 22nd. He engages in the exact same conduct that formed the basis of the TRO just 12 days after the TRO was entered. And he admits to it,

Your Honor. This is not can I meet a clear and convincing? It is not even beyond a reasonable doubt. There is no doubt. There is a certainty. Because he admitted to it right here at the preliminary injunction hearing.

Question, "And you personally instructed, on or about December 22nd, employees of those Advisors to stop doing the trades that Mr. Seery had authorized, right?" Answer, "Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle the trades that occurred, but that's a different ball of wax."

And later on, question, "And you would agree with me, would you not, that you personally instructed the employees of the Advisors not to execute the very trades that Mr. Seery identifies in this email, correct?" Answer, "Yes."

You know, certainty, Your Honor. Not clear and convincing. Not beyond a reasonable doubt. Certainty, because he has admitted to it.

So there you have it, Your Honor. We're going to present evidence today of -- I think I've got 17 separate violations in just a 29-day period. Mr. Seery will testify, hopefully quite briefly, that he never authorized any of this, that he had no knowledge of this, that if he knew any of this was occurring he would have fired these people immediately, whether or not there was a TRO in place.

We're going to put evidence before the Court as to the

fees that my firm has charged the Debtor's estate dealing with all of this. Mr. Seery will testify that those fees don't begin to adequately compensate the Debtor because they don't include the fees that are incurred by the Creditors' Committee or FTI or DSI. Mr. Seery will testify that the Debtor went out and hired Kasowitz Benson because they needed some very technical advice on the CLOs. Another $70,000.

He's going to testify that there's noneconomic harm here. The undermining of his authority. The -- just the contempt with which all of the employees clearly saw Mr. Dondero treating the Debtor with. And all of that is really problematic.

So, at the end of the day, Your Honor, I don't know what Mr. Dondero's excuses are going to be here, but I want to be really, really clear: These provisions could not be more clear. They're going to have to explain away 17 different things. There is no pot plan exception, there is no settlement exception, although there will be no communications that relate to either topic. There will be no shared services exception because nobody party to these communications are party to a shared services agreement, and there will be no shared services agreement in the record.

The Debtor is tired of this. I'm tired of it, personally. I've really gone through this way too much. I know this record better than I should, to be honest with you. But we're

going to do it today, and I'm glad we're going to do it today, and I assure you, Your Honor, that I will do my very best to make sure this hearing is concluded today.

Thank you very much.

THE COURT: All right. A couple of follow-up questions on that point, concluding today. I know that at one point there was some back-and-forth through my courtroom deputy about putting limitations on the time this hearing would take. And I never weighed in, I don't think, on that. How many witnesses and how much time do you expect your case in chief to take? You've mentioned Seery and we've heard about Leventon and Ellington.

MR. MORRIS: Yeah. Well, I'll just -- I'll just put it out there right now, Your Honor. We made a decision yesterday, because we are so desirous of getting this done today, I don't think we're going to call Mr. Leventon and Mr. Ellington today. I think that they have information that corroborates some of the allegations and some of the facts that we'll be adducing, but I think, between the documents and Mr. Dondero himself, you know, we thought long and hard about it, but I'm prepared to try to limit -- I don't know how long I took on the opening, but I offered to do this with Mr. Dondero and say three-and-a-half hours each, and that way we get done today. And I'm still prepared to do that.

And so now, you know, now the cat's out of the bag. I'm

not going to call Mr. -- I mean, I'll cross them if -- because they're on -- they're on Mr. Dondero's list, too. I mean, you know, I heard counsel talk about agreements with the Debtor and all of that. I don't know what agreement she has with Mr. Dondero. But he's on their list, too, so that, you know, Mr. Dondero may call them, and if they do, I'll certainly cross them then. But I want to get this case done today. I'm going to call Mr. Dondero, I'm going to call Mr. Seery, and I'm going to rest. So there's no surprises.

THE COURT: All right. Well, it sounds like you're not committing a hundred percent to no Leventon and no Ellington.

MR. MORRIS: No, I am, in fact. I'm committing a hundred percent --

THE COURT: You're just saying --

MR. MORRIS: -- to my case in chief.

THE COURT: Okay.

MR. MORRIS: To my case in chief. If Mr. --

THE COURT: You're just saying if --

MR. MORRIS: If Mr. Dondero chooses to call them, --

THE COURT: If Dondero calls them, --

MR. MORRIS: -- I'll cross them.

THE COURT: -- you'll cross them?

MR. MORRIS: Yeah.

THE COURT: Okay.

MS. DANDENEAU: Your Honor, this is Debra Dandeneau. In light of what we just heard from Mr. Morris, which we have not heard up until now, may Mr. Ellington and Mr. Leventon be excused? We have no agreement with any other party to produce Mr. Ellington and Mr. Leventon for this hearing.

THE COURT: All right. Mr. Wilson, --

MR. WILSON: Yes, Your Honor.

THE COURT: -- do you have anything to say on this?

MR. WILSON: Yes. I was planning to ask some questions, not a whole lot, but I did want to ask questions of both Mr. Ellington and Mr. Leventon. They are on our witness list as well.

MS. DANDENEAU: Okay. Thank you.

THE COURT: All right. Let's have them stick around.

MS. DANDENEAU: I tried, Mr. Morris.

THE COURT: Okay.

MR. MORRIS: And I tried for you.

THE COURT: All right. Well, Mr. Wilson, let me hear from you on how many witnesses and how long you think your case will take.

MR. WILSON: Your Honor, I am planning to conclude my presentation in the time that we've agreed to. I don't have any additional witnesses that I plan on calling except those that have been mentioned already.

There is a reference to Jason Post on our exhibit list,

but he will not be called today.

THE COURT: All right. So you expect to have questions of Seery, Dondero, and Leventon and Ellington. Is that correct?

MR. WILSON: That's correct, Your Honor.

THE COURT: All right. Well, can we talk about mechanics? Rather than recalling them, I mean, can we just all agree that any cross can go beyond the scope of direct so we can --

MR. MORRIS: Yes, Your Honor.

THE COURT: -- only call them one time? Everyone agree? Mr. Morris says yes.

MR. MORRIS: Yes.

THE COURT: Can you agree?

MR. WILSON: Yes, I agree to that.

THE COURT: Okay. All right. Well, do you agree to three-and-a-half hours total for your case?

MR. WILSON: Are you speaking to me, Your Honor? If so, yes, I do.

THE COURT: Okay. Very good.

Well, Nate, we've got the time parameters to work within.

Mr. Wilson, the one other housekeeping matter I had was I see on the docket that I never specifically entered an order on your motion *in limine*. I did remember telling you all at one point in open court right after it was filed that I was

not inclined to grant it, but I want you to know that I'm not going to grant that.

As you know, there's no jury. And as we judges tend to say in this context, we can weed out what is relevant versus irrelevant. And so I think we need to go ahead and sustain the objection on that and allow the full amount of testimony and evidence that Movant seeks to put in.

All right. So, with that, you may make your opening statement.

MR. WILSON: All right. Thank you, Your Honor. May it please the Court?

THE COURT: Go ahead.

OPENING STATEMENT ON BEHALF OF JAMES D. DONDERO

MR. WILSON: The Fifth Circuit instructs that a party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order. And we know that from a variety of Fifth Circuit cases, but the one I was just quoting from is *Travelhost v. Blandford*, 68 F.3rd 958.

We also know that in a civil contempt proceeding the burden of proof, as Mr. Morris alluded to, is clear and convincing evidence. And the Fifth Circuit in the *Travelhost* case defines clear and convincing evidence as that weight of proof which produces in the mind of the trier of fact a firm

belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction without hesitancy of the truth of the precise facts of the case.

And I submit to you, Your Honor, that the evidence that you will hear today does not rise to the level of clear and convincing that Mr. Dondero violated a definite and specific order of the Court.

In fact, I think the evidence will demonstrate just the opposite. Mr. Dondero recognized why the Court entered the temporary restraining order, and he's going to talk to you about that. He took the Court's order seriously. He discussed it with his counsel and he even had follow-up discussions with his counsel to ask specific questions about what the order allowed him and did not allow him to do. And then, accordingly, he tried to shape his behavior so that he would not run afoul of the order.

But unfortunately, the Debtor interprets the order much more broadly than Mr. Dondero and his counsel did, and therein lies the problem. If the Debtor is correct and Mr. Dondero getting a new phone or appearing at the Highland office to give his deposition or attempting to ensure that the proper procedures for discovery are followed violates the TRO, it is simply too broad and too vague to be enforceable.

In reality, what the Debtor wants to do is hold Mr. Dondero in contempt for violating not the TRO but a letter that the Debtor's counsel sent to Mr. Dondero's counsel two weeks after the TRO was entered. You're going to see that letter today.

The prohibitions against communications in the order are confusing and problematic. There's a nonspecific carve-out for communications regarding shared services. And by the way, contrary to what Mr. Morris told you, Mr. Dondero has both the shared services agreements on his exhibit list today, Exhibits 1 and 2.

The only two Highland employees that the Debtor alleges that Mr. Dondero communicated with are two lawyers who are covered by the shared services agreement. Moreover, Mr. Ellington was also tasked -- and you'll hear about this -- as being a go-between between Mr. Seery and Mr. Dondero from the inception of the independent board and continuing through Mr. Seery becoming the CEO and until the day Mr. Ellington was terminated in January.

Mr. Seery never told Mr. Ellington that he was to stop performing his go-between role with Mr. Dondero, even after the December 10th TRO was entered. In fact, he instructed Mr. Ellington to take Mr. Dondero's calls, and he continued to send messages to Mr. Dondero through Mr. Ellington up until the day before Mr. Ellington was terminated.

The footnote in the TRO is equally confusing because the footnote states that, for the avoidance of doubt, this order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to motions filed in the above-referenced bankruptcy case. However, the Debtor now says that Mr. Lynn, Mr. Dondero's attorney, sending emails to Mr. Ellington seeking to identify a witness for a hearing violates the TRO. This is true even though Mr. Seery instructed Mr. Ellington that he could talk to Mr. Lynn as much as he wanted to.

The evidence will further reveal that the meaning of the words "interference" and "threat" are subject to varying interpretations. And you'll hear evidence of what the Debtor contends are threats and interference, and you'll hear testimony from Mr. Seery about how he was impeded, if at all, in his conduct running the Debtor.

Now, Mr. Dondero has conceded that the events that led to the TRO in the first place were inappropriate, and he will testify about that today. He sent emails and texts that ultimately led to the TRO. But he changed his behavior. He conscientiously tried to avoid doing any like thing after the entry of the TRO.

I think Mr. Seery will testify today that no trades were stopped, he has not changed his investment strategies or any other aspect of his responsibility since the entry of the TRO.

And so therefore, even if Mr. Morris is going to argue that the violations of the TRO by Mr. Dondero impeded the Debtor, I think the evidence will reflect otherwise. At most, it could be considered a technical violation, but I believe that Mr. Dondero tried his best to do nothing to violate this TRO and only operate -- tried to operate within its bounds.

Now, the Supreme Court has stated in a case called *Longshoremen Association v. Philadelphia Marine Trade*, 389 U.S. 64, that the judicial contempt power is a potent weapon. When it's founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who obey them will know what the court intends to require and what it means to forbid.

The evidence today is going to show that Mr. Dondero did not understand that the items that the Debtor contends violate the TRO were, in fact, violations of the TRO. Because as you'll see when you look at the language of the TRO and compare it to the allegations made by the Debtor, that there's no violation of a clear and specific provision of the TRO.

Thank you.

THE COURT: All right. Thank you.

Mr. Morris, you may call your first witness.

MR. MORRIS: Thank you, Your Honor. The Debtor calls Mr. James Dondero.

THE COURT: All right. Mr. Dondero, could you speak up and say, "Testing, one, two" so I can pick up your --

MR. DONDERO: Testing, one, two.

THE COURT: All right. I hear you but I don't see you yet. Is your video turned on?

MR. DONDERO: Here we go.

THE COURT: Okay. Gotcha. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you.

Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

JAMES D. DONDERO, DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Dondero. You're aware, sir, are you not, that Judge Jernigan entered a TRO against you on December 10th, correct?

A Yes.

Q But you never reviewed the declaration that Mr. Seery filed in support of the Debtor's motion for the TRO, correct?

A I don't believe so.

Q You didn't even know the substance of what Mr. Seery alleged in his declaration, correct?

A I discussed the TRO itself and I guess, broadly, the

supporting documents with counsel.

MR. MORRIS: Just one moment, Your Honor.

THE COURT: Okay.

(Pause.)

BY MR. MORRIS:

Q I'll ask the question again. You didn't even know the substance of what Mr. Seery alleged in his declaration, correct?

A As far as I know, it hinged on the trades in the week of Thanksgiving.

Q Okay. As of the time of the preliminary -- withdrawn. Do you recall that you testified at the preliminary injunction hearing on January 8th?

A Yes.

Q Okay. And do you recall, as of that time, you did not even know the substance of what Mr. Seery alleged in his declaration?

A I don't recall what I said then.

Q That's because you didn't even think about the fact that the Debtor was seeking a TRO against you; isn't that right?

A That I don't -- what do you mean by that?

Q You didn't even think about the fact that the Debtor was obtaining a TRO against you when you put yourself back in December; isn't that right?

A When the TRO was put in, I changed my behavior materially,

and I -- I got enough of an understanding of it from my counsel.

MR. MORRIS: Move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q You did not care that the Debtor was seeking a TRO against you; isn't that right?

A I wouldn't describe it like that, no.

MR. MORRIS: Can we go to -- you know what? Before I do that, Your Honor, in order to just make this easier, I'd like to move into evidence the Debtor's exhibits at one time, now that we have Your Honor's ruling on the motion *in limine*. The Debtor has Exhibits 1 through 37 that were lodged at Adversary Proceeding Docker No. 80 on February 1st. I guess let's just do them one at a time. And the Debtor would respectfully request that those documents be admitted into evidence.

THE COURT: All right. Mr. Wilson, any objection? (Pause.) You're on mute. Mr. Wilson, you're on mute.

MR. WILSON: I didn't understand the request. Did he say all of his evidence?

THE COURT: Well, he's got --

MR. MORRIS: We're --

THE COURT: -- a couple of different batches on the docket. He's asked for 1 through 37 at Docket Entry No. 80 to

be admitted at this time.

MR. WILSON: Okay. I do have some objections to some of those items.

THE COURT: Okay. Do you want to go through which ones you want to object to?

MR. WILSON: Yeah. I would object to 3, 4, 5, 6, 16, 23, 29, 30, 31, 32, 33, 34, and 35.

THE COURT: Well, so shall we just let you offer those the old-fashioned way, Mr. Morris, as you want a witness to testify about them? Or do you have a response right now? I haven't really heard the substance of the objection, but it probably makes more sense to just admit what's not objected to now and you can --

MR. MORRIS: Yeah. Let's start, let's start with that.

THE COURT: All right.

MR. MORRIS: Let's start with that.

THE COURT: All right. So the Court is admitting 1, 2, 7 through 15, 17 through 22, 24 through 28, and then 36 and 37 at this time. All right?

(Debtor's Exhibits 1, 2, 7 through 15, 17 through 22, 24 through 28, 36, and 37 are received into evidence.)

MR. MORRIS: All right. And next we have, Your Honor, Exhibits 40 through 59 that can be found at Adversary Proceeding Docket No. 101 that was filed on February 19th.

THE COURT: All right. You're offering all of those?

MR. MORRIS: Yes.

THE COURT: All right. Mr. Wilson, any objection?

MR. WILSON: Yes. I object to 40 through 46 and then 56 through 69.

THE COURT: All right. Well, so I will admit 47 through 55, and then we'll let Mr. Morris offer the others the old-fashioned way if he wants to.

(Debtor's Exhibits 47 through 55 are received into evidence.)

MR. MORRIS: Okay. And just to make this easy for the Court, the Debtor will withdraw Exhibits 41 through 46 --

THE COURT: Okay.

MR. MORRIS: -- and 58 and 59.

THE COURT: All right.

(Debtor's Exhibits 41 through 46 and Exhibits 58 and 59 are withdrawn.)

MR. MORRIS: All right. So if we go back now, Exhibit 36 is in evidence. Exhibit 36 is the transcript from the preliminary injunction hearing on January 8th. And I would ask Ms. Canty to put up Page 23, Lines 10 through 12.

BY MR. MORRIS:

Q Mr. Dondero, were you asked this question and did you give this answer? Actually, beginning at Line 8. Question, "You didn't even know the substance of what Mr. Seery alleged in

his declaration at the time I deposed you on Tuesday, correct?" Answer, "Correct."

And that's because --

A I'm sorry, what page are you on?

Q Yeah, it's Page -- I apologize -- 23.

MR. MORRIS: And then you can see, Your Honor, we read from his deposition transcript and I ask the following question and get the following answer beginning at Line 10.

BY MR. MORRIS:

Q (reading) Question, "Did you care that the Debtor was seeking a TRO against you?" Answer, "I didn't think about it."

That was the testimony that you gave at your deposition and that you affirmed at the hearing on January 8th. Isn't that right, Mr. Dondero?

A Yes.

Q Okay.

MR. MORRIS: Can we take this down, please?

BY MR. MORRIS:

Q You didn't listen to the hearing where the Court considered the Debtor's motion for the TRO, correct?

A Correct.

Q You never read the transcript in order to understand what took place in the courtroom when Judge Jernigan decided to enter the TRO against you, correct?

A Correct. I relied on counsel.

MR. MORRIS: I move to strike the latter portion of the answer.

THE COURT: Overruled.

BY MR. MORRIS:

Q Mr. Dondero, at least as of the preliminary injunction hearing on January 8th, you never bothered to read the TRO that was entered against you, correct?

A Again, I relied on counsel. I don't -- I don't remember exactly when I read it. But I -- I think you're correct.

Q Okay. Let's talk about the cell phone for a bit. How long were you the CEO of Highland Capital Management?

A Since 1994.

Q And Highland had an employee handbook; isn't that right?

A Yes.

Q And they had that handbook during the period of time that you were the CEO, right?

A I'm not sure we had one for the first half-dozen years, but more recently, for sure, we've had a handbook.

Q Is it fair to say that you had the handbook for at least ten years prior to the petition date?

A Yes.

Q Okay. And as the CEO of Highland Capital Management, you knew that the purpose of maintaining the handbook was to inform Highland's employees of Highland's policies and

practices, correct?
A Yes.
Q Okay. And you personally reviewed the handbook, right?
A Once a year, in compliance training, we go over the compliance manual or any major changes for about half an hour.
Q Can you describe for the Court the compliance training that you just referred to?
A Usually, senior executives would meet with Thomas Surgent for -- one-on-one for about half an hour to go over any changes or anything different on the regulatory front that affect the manual.
Q And that included both the compliance manual and the employee handbook, correct?
A I -- I believe so. Mainly the compliance manual, but -- yeah, I believe so.
Q And you actually completed certifications on an annual basis with respect to your compliance with the compliance policies and the employee handbook, right?
A When the meeting is concluded, yes, we sign what was gone over in the meeting. But that paper would probably explain what was gone over in the meeting. I don't remember exactly what was gone over.
Q Okay. That's fair.
MR. MORRIS: Can we -- let's take a look at Exhibit 55, if we could. That's a copy of the employee handbook, and

that's been admitted into evidence.
BY MR. MORRIS:
Q Do you recall that one of the --
MR. MORRIS: If we could just go to the first page of the document. Yeah.
BY MR. MORRIS:
Q Do you recall that one of the policies in the handbook pertained to a cell phone benefit that HCMLP made available to employees?
A No.
MR. MORRIS: Okay. Can we go to Page 12, please? Scroll down just a little bit.
BY MR. MORRIS:
Q You see there's a cell phone benefit there? And do you recall that under the cell phone benefit employees could obtain up to a hundred dollars a month towards the cost of their own cell phone if they -- if they complied with the policy?
A Yes, I see that.
Q Yeah. And participation in the cell phone benefit, that was voluntary, right? Nobody was required to do that?
A I -- I -- I don't know.
MR. MORRIS: All right. Let's go to the next page, Page 13.
BY MR. MORRIS:

Q Do you see the first sentence of the first full paragraph, "Participation in this policy is entirely voluntary"? Do you see that?

A Yes.

Q So does that refresh your recollection that the cell phone benefit policy was voluntary?

A We can go through the manual. I don't have a detailed memory of the employee manual. It says what it says. I --

Q Okay.

A I don't know.

Q Okay.

MR. MORRIS: Let's just scroll down a little bit. Right there.

BY MR. MORRIS:

Q Do you see the paragraph beginning, Employees?

A Yes.

Q And about halfway through that paragraph, there's a sentence that begins, "Further." Can you just read that sentence out loud?

A (reading) Further, regardless of whether employees choose to participate in this policy, all email, voicemail, text messages, graphics, and other electronic data composed, sent, and/or received related to company business remain the property of Highland.

Q So that was the company's policy, correct?

A Yes.
Q And that was --
A It appears so.
Q And that was the company's policy that applied to all employees, correct?
A As far as I know, although didn't we just establish it's voluntary, the participation, or no?
Q Voluntary to participate in the -- in the cell phone benefit. But what you just read says, quote, Further, regardless of whether the employees choose to participate in this policy, all --
A Okay.
Q And then it goes on. So will you agree with me that it applies to all employees?
A Yes.
Q Okay. The compliance group was responsible for making sure that all of its -- all of Highland's employees were in compliance with the various firm policies, correct?
A Yes.
Q And for a number of years prior to the petition date, Thomas Surgent served as the chief compliance officer, correct?
A Yes.
Q And I think, as you just alluded to, at least on an annual basis, Mr. Surgent sat down with senior executives to go over

the compliance in the -- the compliance policies in the employee handbook, correct?

A Yes.

Q And you personally participated in those meetings, right?

A Yes. And I believe I followed it to the letter.

Q Okay. And as part of the process, you certified that you were in compliance with the obligations applicable as set forth in the employee handbook, correct?

A Yes, and I believe I have been.

MR. MORRIS: Can we put up Exhibit 56, please?

BY MR. MORRIS:

Q And is this the certification --

MR. MORRIS: And we can scroll down.

BY MR. MORRIS:

Q Again, this is the first like real document we're looking at here, Mr. Dondero. The same rule always applies: If there's anything that you think you need to see in the document, just let me know. We've taken pains to redact all of your personal information.

MR. MORRIS: If we go down.

BY MR. MORRIS:

Q But this is the form that was completed for you in 2020 with respect --

MR. MORRIS: If we go to the top.

BY MR. MORRIS:

Q This is the Annual Certification and Conflicts of Interest Disclosure in 2019. This is the firm you were referring to earlier, right?

A Can you show me the part that talks about the employee manual? Because I didn't see that.

Q Sure.

MR. MORRIS: Let's go to the last page, please.

BY MR. MORRIS:

Q Do you see Notes there?

A Yes.

Q All right. And about five lines down -- and I'm just going to read from it -- it says, quote, I have received, have access to, and have a -- and have read a copy of the employee handbook, and I am in compliance with the obligations applicable to employees set forth therein.

Have I read that correctly?

A Yes.

Q So this is your compliance certification in which, among other things, you certify that you had access to and had read and were in compliance with the employee handbook, right?

A Yes.

Q Okay.

A I believe I was, within my tenure at Highland, compliant with it.

Q Okay.

MR. MORRIS: Can we go to Exhibit 57, please?

BY MR. MORRIS:

Q And this is a Q3 2020 questionnaire and transaction certification from you effective as of October 7th. Do you see that?

A Yes.

Q And is this just another periodic compliance certification that Mr. Surgent and the compliance group obtained from senior employees?

A I'm not aware of this one. I mean, I -- I don't remember these questions being part of a --

(Echoing.)

Q Okay.

MR. MORRIS: Let's look to the bottom of the document, Page 8 of 8.

BY MR. MORRIS:

Q Again, we've tried to redact everything that's personal to you, sir. You'll see that there's another certification that you had, quote, received, have access to, and are otherwise in compliance with the handbook. Do you see that?

A Yes.

Q And was that a true statement in October 2020?

A Yes.

Q Okay.

MR. MORRIS: Your Honor, these two exhibits, 56 and

57, are two exhibits that Mr. Dondero's counsel had objected to, so I move for their admission into evidence.

THE COURT: All right. Mr. Wilson, your objection?

MR. WILSON: I'm sorry, Your Honor, were you asking for a response from me?

THE COURT: Yes. Earlier you had objected to 56 and 57 --

(Echoing.)

MR. WILSON: I'm getting a lot of feedback. I'm having trouble hearing.

THE COURT: Yes. Mr. Dondero, your past few answers have had some distortion. So I don't know if you've got anyone there to kind of help you make some adjustments. I'm not sure what --

It's coming from Mr. Dondero, correct?

THE WITNESS: I'm sorry, are you saying it's on my end, the distortion?

THE COURT: Yes. Right now you're loud and clear, but your -- a few answers previously, it's been distorted.

All right. So let's just turn to Mr. Wilson. You had earlier objected to Exhibits 56 and 57. They are now being offered. Do you have an objection still?

MR. WILSON: Well, I do, Your Honor. I don't believe that Mr. Dondero has authenticated these exhibits. He wasn't familiar with them. They're not signed by him. I think that

-- I think they're also hearsay.

Without -- without more confirmation by Mr. Dondero as to what's in these, that he actually made these statements and he signed them, I don't think that they qualify as competent evidence.

THE COURT: Mr. Morris?

MR. MORRIS: If I may, Your Honor.

THE COURT: Uh-huh.

MR. MORRIS: Number one, Mr. Dondero testified unambiguously that each year he -- he completed this form. Particularly as it relates to Exhibit 56, he specifically acknowledged that that was the form that was prepared for him at that time as of the date.

It is true that he did say that with respect to 57 he didn't specifically recall it, but he did testify that he was in compliance and that he understood and agreed with the statement that's in the note itself. And that's the only reason that we're offering the document. So, based on his testimony, I'd respectfully request that both documents be admitted into evidence.

THE COURT: All right. I'll overrule the objections. 56 and 57 are admitted.

(Debtor's Exhibits 56 and 57 are received into evidence.)

THE COURT: All right. Mr. Morris, --

MR. MORRIS: Mr. Dondero?

THE COURT: -- you may continue.

MR. MORRIS: Yes.

BY MR. MORRIS:

Q Mr. Dondero, you knew no later than July 2020 that the U.C.C. wanted your text messages; isn't that right?

A I heard your opening but I was not specifically aware or noticed, nor did I -- nor did I believe getting a new phone changed any of that.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Mr. Dondero, you knew no later than July 2020 that the U.C.C. wanted your text messages, correct?

A No.

Q In fact, this Court and all parties in interest were explicitly told in July that you knew the U.C.C. wanted your text messages; isn't that correct?

A I was not specifically aware.

Q Okay. Do you remember last summer that the Creditors' Committee made a motion to compel?

A I have no recollection of that.

Q Okay.

MR. MORRIS: Can we put up Exhibit 34, please?

Okay. Your Honor, this is a copy of the Creditors' Committee Emergency Motion to Compel Production by the Debtor

dated -- I'm not sure of the date.

Can we just go up to the top?

Dated July 8th, 2020, that was lodged at Docket No. 808. And I'd like to offer this into the record simply to establish that a request was publicly made by the U.C.C. for Mr. Dondero's text messages.

THE COURT: All right. Mr. Wilson, you had an objection earlier. What would you like to say?

MR. WILSON: Yes. Yes, Your Honor. My objection is just primarily relevance. As you stated in your opening remarks, the time period we're concerned with is December 10th through January 7th, I believe, and the Debtor is trying to use a document from July of 2020 to impute some knowledge to Mr. Dondero and tie it into that time period six months later. I don't believe that's proper and I would object.

MR. MORRIS: If I may, Your Honor?

THE COURT: You may.

MR. MORRIS: This is -- this is a very simple connect-the-dots. Mr. Dondero was the CEO of Highland Capital Management. Highland Capital Management had an employee handbook. The employee handbook specifically said that text messages related to the company's business were the company's property. Mr. Dondero certified in the exhibits that were just admitted into evidence that he was familiar with the company's employee handbook and that he was in compliance

thereof.

This document establishes that the Debtor -- that the Creditors' Committee wanted Mr. Dondero's text messages. The next document that we're going to look at is from Mr. Dondero's own lawyers where he acknowledges that he understands that the Creditors' Committee wants his text messages. And all of that is directly relevant to why, when the phone gets thrown away after the TRO is entered into, the damage that is caused the Debtor. The Debtor has lost its property, in violation of 362(a)(3) of the Bankruptcy Code. It's property that Mr. Dondero knew was the Debtor's property. It's property that Mr. Dondero's -- at least his lawyers knew the U.C.C. wanted.

So I'm not charging that anything that happened in July 2020 was a violation of the TRO. What I am saying, though, and what the evidence clearly shows, is that when that phone was disposed of after the TRO was entered, it was disposed of at a time when Mr. Dondero knew that these text messages were the company's property and that the U.C.C. wanted them.

THE COURT: All right. I overrule the objection. 33 is admitted.

(Debtor's Exhibit 33 is received into evidence.)

MR. MORRIS: Go to Paragraph 6, please, just to make it clear.

BY MR. MORRIS:

Q Okay. In Paragraph 6 there, there is a sentence that says, quote, In particular, the Committee has spent a considerable amount of time attempting to obtain any production of emails, chats, texts, or ESI communications from the Debtor.

Do you see that?

A Yes.

Q And the U.C.C. specifically identified you as one of the custodians from whom it was seeking this information. Do you recall that?

A Vaguely.

Q All right. Let's just go to Paragraph 10 and Footnote 8. There's a reference to nine identified custodians. Do you see Footnote 8? You're among the custodians that the U.C.C. identified as folks from whom they wanted text messages and other ESI. Right?

A Yes.

Q And your lawyers certainly knew that the U.C.C. wanted your text messages, right?

A Why didn't they just get them from the phone company? Just, if they were trying that hard, why -- why did they -- why did they not get them from -- directly from the phone company?

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Mr. Dondero, your lawyers knew that the U.C.C. wanted your text messages. Isn't that correct?

A I don't know.

Q Do you recall that your lawyers filed a response to the U.C.C.'s motion?

A (no immediate response)

Q Do you recall that your lawyers filed a response to the U.C.C.'s motion?

A I -- I do not. I hope they said, just get all the texts you want from the phone company. I hope that's what they said.

MR. MORRIS: Okay. Can we put up -- I move to strike, Your Honor.

THE COURT: Overruled.

MR. MORRIS: Can we put up Exhibit 40, please?

BY MR. MORRIS:

Q And this document is in evidence. Do you see that this is your response or the response that was filed on your behalf?

A Yes.

MR. MORRIS: Can we go to Paragraph 3, please?

BY MR. MORRIS:

Q Can you just read that paragraph out loud?

A (reading) Accordingly, the proposed protocol of the Committee seeks, among other things, documents, emails, and

other electronically-stored information, ESI, exchanged from or between nine different custodians, to include Dondero. The Committee has requested all the ESI for the nine custodians, including, without limitation, email, chat, and text, Bloomberg Messaging, or any other ESI attributable to the custodians.

Q So, on July 14th, your lawyers told the Court on your behalf that it knew -- that they knew that you were on one of nine custodians from whom the Committee wanted text messages. Correct?

A That's what it says.

Q Okay. And are you aware that the Court subsequently entered an order giving the Committee the relief that it sought?

A Okay. No, I'm not specifically aware.

Q Okay. Until -- until at least December 10th, the day that the TRO was entered into, you had a cell phone that was bought and paid for by the Debtor. Correct?

A Yes.

Q And that cell phone had text messages on it. Correct?

A Yes.

Q And from time to time, you use your phone to exchange text messages concerning company business. Correct?

A Very rarely. But yes.

Q But you do. Correct?

A Yes.
Q And in fact, in fact, we're going to look at certain text messages that were sent to you or that were sent by you on your new phone concerning company business. Correct?
A Yes, we will.
Q And we know that the cell phone existed after the TRO was entered, correct?
A I don't -- maybe a day or two, but it -- it -- I don't know if it's fair to say it existed. I followed protocol. I gave my old phone to the tech group. They got me a new phone. They handled it according to the manual and the protocol. When it was put back in Tara's drawer, I don't know if it had any information on it at that point in time. But, again, you could have gotten all the texts you want from the phone company.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.
MR. WILSON: Your Honor, can Mr. Morris state the objection that he has to that testimony?
MR. MORRIS: It's not responsive to the question. It's a speaking -- it's just -- it's what he wants to say. I'm asking a leading question, Your Honor, that's a yes or no answer, and he's giving me the answer that he wants, --
THE COURT: All right. I agree --
MR. MORRIS: -- not the answer that I've asked for.

THE COURT: I agree. It was nonresponsive.

MR. MORRIS: Your Honor, I forgot in my -- in going over the exhibits. Last night, we filed a notice of a replacement of certain exhibits. That could be found at Docket No. 128. And among the three exhibits that were replaced was Exhibit 11.

Exhibit 11 is a copy of the TRO. The reason that we replaced it is because the version that was on Docket No. 80 had -- I guess there was typing along the top so you couldn't see the date and time of the entry.

But I would ask Ms. Canty just to put up onto the screen the version of Exhibit 11 that was attached to Document 128 last night.

THE COURT: Okay.

BY MR. MORRIS:

Q And so here, you can see -- you see this is the TRO, Mr. Dondero? We can scroll down a little bit if that's helpful. All right. This is the TRO, right?

A Yep.

Q And if you go to the top, you can see that it's entered on December 10th at 1:31 in the afternoon. Am I reading that correctly?

A Yes.

Q Okay. And later that night, you were told that your own

-- your old phone was in the top of Tara's desk drawer. Correct?

A Yes.

Q Okay.

MR. MORRIS: Can we just put up Exhibit 8, please?

BY MR. MORRIS:

Q And this is the text message that Mr. Rothstein sent to you on December 10th at 6:25 p.m. at night. Right?

A Yes.

Q And so your phone existed after the TRO was put into effect, correct?

A Again, I have to answer that question by saying that the process for getting a new phone started two weeks earlier. The technology group, Jason and crew, could have saved or done whatever with the phone, but they followed protocol and they wiped the phone exactly as Thomas Surgent and the employee manual says, and the phone that was put back on my desk, the old phone, had nothing on it.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Okay. Sustained.

MR. MORRIS: It's a very simple question.

THE COURT: Mr. Dondero, I'm going to --

MR. MORRIS: Sir, --

THE COURT: I'm going to remind you of the rules. You need to give direct answers to the questions, and most of

these questions are yes or no answers. And then when Mr. Wilson has the chance to examine you, presumably he will ask follow-up questions that allow you to give some of these answers that I guess you're wanting to give. Okay? So please, please listen carefully and just directly answer the questions.

All right. Mr. Morris, go ahead.

THE WITNESS: I'll do the best -- Your Honor, listen, I'll do the best I can. In all due respect, I will do the best I can. But if I don't believe I can give an honest or not misleading answer with a yes/no, I need to give a more detailed answer or I need to say I can't answer the question that you've put forward.

THE COURT: Okay. I understand why it's difficult, but, again, that's why we allow direct, cross, redirect, recross, because it is your own lawyer's responsibility, in cooperation with you, to ask questions that allow you to give the fulsome answers that you think the Court needs to hear. But at this juncture, please just try to directly answer the question yes or no when that's all it is aimed at asking.

All right, Mr. Morris. Go ahead.

MR. MORRIS: Thank you, Your Honor.

BY MR. MORRIS:

Q On December 10th at 6:25 p.m., after the TRO was entered into, Mr. Rothstein told you that your old phone was in the

top of Tara's desk. Correct?
A Yes.
Q Okay. And Mr. Rothstein is not going to testify in this proceeding, is he? You're not calling him to testify on your behalf, right?
A I don't know.
Q Mr. Surgent is not being called to testify in connection with this proceeding, correct?
A I -- I don't -- I didn't hear him mentioned earlier. I don't think so.
Q Okay. Tara was still serving as your assistant as of January 8, 2021, right?
A Yes.
Q So it's fair to say that you were informed on December 10th that the phone, the old phone, was not thrown in the garbage, had not been disposed of, but was instead sitting in Tara's desk. Correct?
A Yes.
Q And it's also fair to say that, as of December 10th, Mr. Rothstein didn't take it upon himself to throw your old cell phone away. Correct?
A I don't know.
Q So it's fair to say that you were informed on December 10th that the phone was not thrown in the garbage -- withdrawn. It's also fair to say that, as of December 10th,

Mr. Rothstein didn't take it upon himself to throw your old phone in the garbage. Right?

A I don't know what happened to the phone. I don't know what Jason did or did not do.

MR. MORRIS: Can we pull up Page 61 from the transcript of the preliminary injunction proceeding? And if we can go down to Line 20 to 23?

BY MR. MORRIS:

Q Were you asked this question and did you give this answer: "And it's also fair to say that, as of December 10th, Mr. Rothstein didn't take it upon himself to throw your old phone in the garbage, right?" Answer, "Not as that moment, but like I said, I can find out how it was disposed of."

Did you give that answer to that question at that time?

A Yes.

Q Okay. But you don't know who threw your phone away, right?

A No.

Q It never occurred to you to get the Debtor's consent before the phone was thrown away, correct?

A I -- everything I did with regard to the phone was with the Debtor's consent and process. If that answers your question.

Q Sir, you never -- you never asked the Debtor for permission to throw your phone away, did you?

A I -- I didn't have to because I handled it according to the employee manual by giving it to the tech group.
Q Does the employee manual tell you that you're allowed to throw away a phone with the Debtor's property on it when a party to a litigation has asked for the text messages?
A There were no text messages on the phone by that point in time.
Q So, so you -- so you allowed the text messages to be erased, even though your lawyers told the Court that the -- that they understood that the U.C.C. wanted your text messages, and in fact, the Court entered an order in order to get those text messages?
A No, that is not correct. I gave it to the tech group, which was part of the Debtor, and they handled it in any which way they could have, but in compliance with the manual. And they wiped the old phone as they got me a new phone. And the Debtor at that point in time could have downloaded, copied, or got from the phone company whatever text messages they wanted.
Q But Mr. Seery didn't even know you were doing this; isn't that right?
A I have no idea.
Q You have no reason to believe that Mr. Seery had any knowledge that you were trading out your phone, correct?
A I believe he knew because he had told all employees to get new phones within the next 30 days. So it wasn't -- it wasn't

a surprise, I don't think, to him or anybody else. And I don't under -- this -- I don't understand the brouhaha over what's really nonsense.

Q Do you think it's nonsense that text messages that are the company's property were disposed of even though they were specifically requested by the U.C.C. and ordered by the Court to be produced? That's what you describe as nonsense?

A I describe it as nonsense when everybody was told to get new phones and everybody got new phones and everybody went through the protocol of giving them to the tech group. The tech group ordered the new phones, got rid of the old phones to protect client data, et cetera, like they've always done. And the Debtor could have made as much copies of anything, knowing that everybody had to get new phones because they were canceling everybody's cell phone in the next 30 days. The Debtor could have done whatever it wanted with the material. And just because the tech group went through the normal historic process, you're trying to hold me and other people on that list somehow accountable, and it's craziness.

Q Okay. It never occurred to you to get the Debtor's consent before you did this, right?

A By not doing it on my own, by not ordering my own phone, I didn't think it was necessary to get Debtor consent because I gave the phone to the Debtor as part of getting a new phone.

MR. MORRIS: Can we get Exhibit -- go to Page 58,

please, Line 15?
BY MR. MORRIS:
Q Were you asked this question and did you give this answer?
MR. MORRIS: If we can scroll down to Line 15.
BY MR. MORRIS:
Q Question, "Did it ever occur to you to get the Debtor's consent before doing this?" Answer, "No."
Did you give that testimony, sir?
A Yes. Because I gave the Debtor my phone. When I got a new phone, I gave them my old phone. The Debtor wiped the phone and gave it back to me.
THE COURT: Is it --
MR. MORRIS: I move to strike every -- after -- after he confirms that he gave that answer to his prior testimony.
THE COURT: Sustained.
MR. MORRIS: Sir, --
MR. WILSON: Your Honor, I'll object that Mr. Morris has asked and answered these questions several times. At this point, he's badgering the witness.
THE COURT: Overruled.
BY MR. MORRIS:
Q Sir, you had the billing changed from the company account to your personal account, correct?
A As did everybody, at the direction of Seery.
Q Sir, you had your account changed; isn't that correct?

A I -- I handled my personal -- or, I had my assistant handle my own personal phone based on the notice that Seery had given everybody.

Q Do you have a copy of that notice? Are we going to have that in evidence today?

A I don't think Seery would deny it. He's not -- hasn't -- well, whatever. No, I don't have a -- I don't have a copy of a memo.

Q So you're telling me that Mr. Seery gave an instruction for everybody to throw the cell phones away that had been asked for by the U.C.C., and he didn't even do that in writing? That's your testimony, is that -- is that he gave that instruction to throw cell phones away that had been specifically requested by the U.C.C., and he didn't even do that in writing?

MR. WILSON: Objection, Your Honor. Mr. Morris is mischaracterizing the testimony.

THE WITNESS: He's -- he's horribly mischaracterizing it.

THE COURT: Okay.

THE WITNESS: I'm saying he told everybody and he stopped paying everybody's cell phone bill at the end of January and he told everybody to get new phones. And to be as compliant as possible, I gave it to the Debtor's employees to handle buying a new phone and handling the old phone according

to the manual and whatever else the Debtor needed to do with the phone.

THE COURT: Okay. Let's try to --

THE WITNESS: So the Debtor --

THE COURT: -- get back on track.

THE WITNESS: -- wiped the phone.

THE COURT: Let's try to get back on track --

MR. MORRIS: So, so you --

THE COURT: -- with the instruction --

MR. MORRIS: Go ahead.

THE COURT: -- of giving yes and no answers. Again, Mr. Wilson is going to get all the time he needs to follow up with his own questions. All right?

Go ahead, Mr. Morris.

MR. MORRIS: Sir, -- thank you, Your Honor.

BY MR. MORRIS:

Q Sir, you never asked the Debtor for permission to change the phone from its account to your personal account. Correct?

A As I've stated, I gave the Debtor my phone. No, I did not ask specific permission. That would be ridiculously redundant.

MR. MORRIS: I move to strike, Your Honor. It's a really simple question. Either he -- either he -- either he asked for permission or he did not. The commentary really needs to stop.

THE COURT: Sustained.

Yes or no? Permission or not?

BY MR. MORRIS:

Q I'll ask the question again. Sir, you never asked the Debtor for permission to change the phone from its account to your personal account, correct?

A I believe I implicitly did by giving them the phone, so I'm going to say yes.

MR. MORRIS: Go to Page 59, please, Line -- Line 11.

BY MR. MORRIS:

Q Were you asked this question and did you give this answer? Question, "And you never asked the Debtor for permission to do that. Correct?" Answer, "No."

Did you give that testimony on January 8th?

A Yes. But I'd like to correct it as I just said.

Q Sir, you never even told the Debtor you were doing what you did. You never even told the Debtor that you were changing, let alone -- withdrawn. Not only didn't you obtain their consent, you never told the Debtor that you were changing the account from its account to your personal account. Correct?

A We were required to move our phones, so no, I didn't tell them that we were honoring their request.

Q This notion of being required to do that, did your lawyers mention that in their papers in opposition to this motion

today, that Mr. Seery had required all of this? Do you recall reading the papers? Is there anything in there about that?

A It's the truth. I -- I don't -- in the papers. I don't know.

Q Okay. Let's look at Line 14, since it's just still on the screen, and I'll ask it again. Were you asked this question and did you give this answer? "You never told the Debtor you were doing that. Correct?" Answer, "No."

Was that the testimony you gave then?

A Again, yes, but I'd like to --

Q Okay.

A -- clarify with what I just said.

Q And you never told Mr. Seery or anybody at my firm that the phone was being thrown in the garbage, correct?

A They knew what the protocol was. You knew what the protocol was. I didn't think there was a reason to.

Q Sir, you never told anybody at my firm or Mr. Seery that you were throwing -- that the phone was being thrown in the garbage, correct?

A No, I did not.

Q Okay. That's all I'm asking. You didn't believe it was necessary to give the Debtor notice that you were taking the phone number for your own personal account and throwing the phone in the garbage, correct?

A I'm sorry. Can you repeat that question?

Q You didn't believe it was necessary to give the Debtor notice that you were taking the phone number for your own personal account and throwing the phone in the garbage. Correct?

A I didn't think -- correct. I didn't think I needed to do anything other than what I did.

MR. MORRIS: I move to strike after the word "Correct," Your Honor.

THE COURT: Overruled.

BY MR. MORRIS:

Q Do you remember, a couple of weeks after Mr. Rothstein told you that your own -- old phone was in Tara's drawer, that the Debtor sent a letter to your lawyers in which it gave notice to you to vacate the offices and return its cell phone?

A I believe, yeah, I believe that was the end of December.

MR. MORRIS: Can we look at that document, please? It's Exhibit 27.

This document is in evidence, Your Honor.

And if we can go to the bottom of the second page.

BY MR. MORRIS:

Q This is a letter from my firm to your lawyers, right?

A Yes.

Q You want to read the first sentence of that last paragraph out loud? "HCMLP."

A (reading) HCMLP will also terminate Mr. Dondero's cell

phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero -- collectively, the cell phones. HCMLP demands that Mr. Dondero immediately turn over the cell phones to HCMLP by delivering them to you. We can make arrangements to recover the phones from you at a later date.

MR. MORRIS: Okay. Can we just scroll back --

MR. WILSON: Your Honor?

MR. MORRIS: -- to see the

MR. WILSON: Can I -- can I make a request that the rule of optional completeness be invoked and the date of the letter be shown?

MR. MORRIS: Yeah. I was just about to get there, sir. I join.

THE COURT: All right. Fair enough.

MR. MORRIS: It's December 23rd.

BY MR. MORRIS:

Q Do you see that, sir?

A Yes.

Q So, if we can go back to what you just read down at the bottom there. So, on December 23rd, my firm, on behalf of the Debtor, is informing your lawyers that it will terminate your cell phone plan. Isn't that right?

A Yes.

Q Can you think of any reason why they would be informing

your lawyers of that on December 23rd if they had already told you that?

MR. WILSON: Objection, Your Honor. He has no knowledge of what the Debtor's lawyers were thinking when they wrote this letter.

THE COURT: Overruled. He can answer if he has an answer.

THE WITNESS: I have -- I have no idea.

BY MR. MORRIS:

Q Okay. But it's true that, on December 23rd, my firm, on behalf of the Debtor, informed your lawyer of its intent to terminate the phone plan of which you were a part. Correct?

A Again, no. I believe the notice happened much sooner, and that's why a whole bunch of people changed their phones at or around the time I did.

Q Who else had phones that were paid for by the Debtor?

A I believe a significant majority of the firm.

Q Isn't it true that only you and Mr. Ellington had phones that were paid for by the Debtor? I'm not talking about the $100 policy that we looked at before. But isn't it true that you and Scott Ellington were the only people in the whole firm who had phones that were paid for by the Debtor?

A I did not know that.

Q Okay. All right. So do you see later on in that paragraph, at the top of Page 3 -- I'll just read it. Quote,

HCMLP further demands --

MR. MORRIS: Oh, no. I'm sorry. Can we go back up a little bit? I'm having trouble. Yeah. Right there.

BY MR. MORRIS:

Q (reading) The cell phones and the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or wiping any information or messages on the cell phone. HCMLP, as the owner of the account and the cell phones, intends to recover all information relating to the cell phones and the accounts and reserves the right to use the business-related information.

Have I read that correctly?

A Yes.

Q And that's what your -- that's what -- that's what the Debtor told your lawyers on December 23rd. Correct?

A Yes.

Q But the Debtor was a couple of weeks too late in making these demands. Correct?

A Because the Debtor wiped my phone. I never wiped my phone.

Q Sir, the Debtor was a couple of weeks too late in making these demands. Correct?

A No.

MR. MORRIS: Page 65 of the transcript, please. Line 4 through 5.

BY MR. MORRIS:

Q (reading) "We were a couple of weeks too late, huh?" Answer, "It sounds like it."

Did you give that answer back on January 8th?

A Yes.

Q And that's because the phones were already in the garbage. Correct?

A No, it -- the phones were already wiped by the Debtor's personnel.

Q Look at Line 6 and Line -- through Line 8 and see if you gave this testimony on January 8th. Question, "Because the phones were already in the garbage; isn't that right?" Answer, "Yes."

Did you give that answer back on January 8th?

A Yes.

Q And that's not -- but that's not what Mr. Lynn told the Debtor in response to the Debtor's letter of January 20 -- December 23rd. Correct?

A I don't know.

Q Well, let's see.

MR. MORRIS: Can we go to Exhibit 22, please?

BY MR. MORRIS:

Q This is your lawyer's response to the December 23rd letter that we just saw. Do you see that?

A Yep.

Q Mr. Lynn doesn't say anything about the cell phone being thrown in the garbage, right?
A He doesn't know what happened to the phone. Neither do I.
Q Sir, Mr. Lynn doesn't say anything about the cell phone being thrown in the garbage, does he?
A No.
Q And Mr. Lynn doesn't say that the phone was disposed of, correct?
A (no immediate response)
Q Mr. Lynn didn't say that the phone was disposed of, did he?
A No, I don't see it in that paragraph.
Q Okay. Mr. Lynn didn't describe any company or policy whereby old cell phones are to be thrown in the garbage or otherwise disposed of, correct?
A I don't know if he would have awareness of that, but no, he doesn't mention it.
Q Mr. Lynn doesn't cite to anything Mr. Seery said with respect to the wiping of phones, right?
A No.
Q Mr. Seery -- Mr. Lynn doesn't reference Mr. Seery at all in this letter response to my colleague, correct?
A Nope.
Q He doesn't cite to any policy in the employee handbook to justify the loss of the cell phone, correct?

A No.
Q And you have no reason to believe that Mr. Lynn would withhold from the Debtor the information that the cell phone had been thrown in the garbage consistent with company practice, correct?
A No.
Q Let's talk about the trespass issue for a moment. Where are the Debtor's offices located, to the best of your knowledge?
A 300 Crescent Court, Suite 700.
Q And how long have they --
A Dallas, Texas.
Q And they're a tenant in that space; is that correct?
A Yes.
Q And they're a tenant pursuant to a lease; is that right?
A Yes.
Q And to the best of your knowledge, Suite 300, the Debtor is the sole tenant under the lease for that space. Correct?
A I -- yeah, I bel... I don't know. I -- the building has rules for subleases. I don't know if it -- affiliates are on the lease or not. I -- I don't -- I don't have an awareness of the lease.
Q So, but you don't have any reason to believe that anybody's on the lease other than the Debtor. Is that fair?
A I -- I just don't know. But it -- I don't -- when it

started, when the lease started ten years ago or eight and a half years ago, I'm sure it had just Highland, but I don't know who's on it now.

Q Okay. Okay. To the best -- you understand the Debtor is subject to the bankruptcy court's jurisdiction, correct?

A Yes.

Q And in that December 23rd letter that we just looked at, the Debtor demanded that you vacate their offices. Correct?

A Yes.

MR. MORRIS: Okay. Let's just look at a little bit of that letter, if we can call back Exhibit 27, please.

BY MR. MORRIS:

Q On the second page, do you see that there's a statement, the paragraph beginning, "As a consequence." That's the paragraph where the Debtor informed your lawyers that your access, quote, will be revoked effective Wednesday, December 30, 2020. Do you see that?

A Yes.

Q And the Debtor informed your lawyers that it was taking steps to revoke your access to the offices because the Debtor believed that you were interfering with the Debtor's business. Right?

A It doesn't say that here, but --

Q Well, look at the paragraph above, if we can. And I don't mean to -- I don't mean to, you know, play games, but the

paragraph above says specifically that, as a result of the conduct, your presence at the offices is being revoked because it's too disruptive to continued management. Do you see that?

A Yes.

Q So I'm not asking you if you agree with it, but there's no question that, on December 23rd, the Debtor told your lawyers that your access was being revoked as of December 30th because the Debtor believed that you were being a disruptive force in the offices. Right?

A Yes.

Q Okay.

MR. MORRIS: And if we can go to the last page, please. If we could just push it down a little bit, because I have this in the upper right corner. No, the other way. I'm sorry. Yeah. Right there.

BY MR. MORRIS:

Q And the Debtor told your lawyers, quote, any attempt by Mr. Dondero to enter the office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Do you see that?

A Yes.

Q So the Debtor's position was very, very, very clear to your lawyers as of January -- as of December 23rd. Is that fair?

A No.

Q The Debtor never -- no, you think -- is it -- are you aware of any exception that Debtor made in this letter that would allow you entry into the offices without protest by the Debtor?

A As I've stated before, my belief was, for the deposition on the 4th, I had no other way to electronically appear, I would have had to cancel, other than coming back to the main conference room at Highland. It looks like there's four days' difference, but with New Year's and the holiday and days off, there's really one business day difference between when I got kicked out and the deposition. I wouldn't have been able to attend the deposition otherwise if -- I didn't -- I still don't believe attending the deposition that you required was a trespass.

Q The Debtor never told you that you would be permitted to enter their offices after December 30th if you, in your own personal discretion, believed it was appropriate. Correct?

MR. WILSON: Objection, Your Honor. I'm going to object to this line of questioning because this doesn't have anything to do with the TRO and instead it's a letter dated December 23rd, 2020 from the Debtor's counsel.

THE COURT: Your response?

MR. MORRIS: Yeah. This is just so simple, Your Honor. The TRO prevents Mr. Dondero from violating the automatic stay. The automatic stay says that Mr. Dondero

cannot take any steps to control the Debtor's property.

The evidence is now in the record that the Debtor is a lease -- is the leaseholder on this space. The Debtor told Mr. Dondero not to enter the space because he was a disruptive force, and the Debtor told Mr. Dondero that if he attempted to enter the space for any purpose, that they would be viewing it as an act of trespass.

So, by entering into the Debtor's premises, by entering into the Debtor's property without the Debtor's consent, is a violation of the automatic stay.

As I said at the beginning of this, if this were the only thing, Your Honor, I probably wouldn't belabor the point. But it's -- it is just more evidence of his complete contempt for the Debtor and for the automatic stay and for the TRO. And I believe it's completely relevant.

THE COURT: All right. I'm going to --

MR. WILSON: Your Honor, my response to that is that he's now got the TRO and trying to invoke two different documents, one of which being 362 itself and the other being this letter, but Rule 65(d) states that a restraining order must describe in reasonable detail, and not by referring to the complaint or other document, the act or acts restrained or required.

THE COURT: Okay. I'm going to sustain the objection. Let's move on.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q During the first week of January, you just walked right into the Debtor's office and sat for the deposition. Correct?

A Yes.

Q And you didn't have the Debtor's approval to enter their offices at any time in the year 2021. Correct?

A Not explicitly.

Q You didn't have the Debtor's approval to enter their offices to give a deposition. Correct?

A Not explicitly. Correct.

Q Now, --

MR. WILSON: Your Honor, I believe you sustained my objection, and I would renew it to the extent that Mr. Morris is trying to establish that entering the Debtor's property on January 4th was a violation of the temporary restraining order.

THE COURT: All right. Well, I think we have a legitimate issue whether the so-called trespass, the entry of Mr. Dondero onto the premises in early January, violated the explicit terms of the TRO, so I'm going to sustain the objection, and move on, please.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Mr. Dondero, in December, after the TRO was entered into,

you interfered with the Debtor's business, correct?
A No, I did not.
Q Well, one of the reasons that the Debtor evicted you is precisely because you were interfering with their business. Correct?
A No, I did not.
MR. MORRIS: Can we go back to Exhibit 27, please?
BY MR. MORRIS:
Q Do you see on the first page, at the bottom, there is an explanation about the Debtor's management of the CLOs?
A Yes.
Q And there's a recitation of the history where, around Thanksgiving, you intervened to block those trades?
A Yes.
Q And if we can continue, the next paragraph refers to a prior motion that was brought by K&L Gates on behalf of the Advisors and certain funds managed by the Advisors?
MR. MORRIS: If we keep going. Yeah.
THE WITNESS: Yes.
BY MR. MORRIS:
Q You were aware of that motion when it was filed, correct?
A Yes.
Q And you were -- you were supportive of making that motion. Right?
A Yes. Generally.

Q Okay.

MR. MORRIS: And just scroll down, down to the next paragraph.

BY MR. MORRIS:

Q The next paragraph says, quote, on December 22, 2020, employees of NPA and HCMFA.

MR. MORRIS: I'm sorry. I can't read it. If we can just push the language down. Let me try again.

BY MR. MORRIS:

Q (reading) On December 22, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLOs' sale of AVYA and SKY securities. Have I read that correctly?

A Yes.

Q NPA refers to NexPoint, right?

A Yes.

Q That's an entity that you largely own and control, correct?

A Yes.

Q And HCMFA refers to Fund Advisors, another advisory firm that you own and control. Correct?

A Yes.

Q On or about December 22, 2020, you personally instructed employees of the Advisors not to execute trades that Mr. Seery had authorized with respect to SKY and AVYA, correct?

A No. That's absolutely not true. I've corrected that

several times now.
Q Sir, you personally instructed employees of the Advisors not to execute the very trades that Mr. Seery wanted executed. Correct?
A Not on December 22nd. The week before Thanksgiving, yes. I respected the -- I respected the TRO and the week of Christmas trades that also gave a multimillion dollar loss to the Funds. I just asked Jason Post to look at the trades.
MR. MORRIS: Can we go to Page 76 of the transcript, please? Line 15 through Line 19.
BY MR. MORRIS:
Q Did you give this answer to this question? Question, "And you would agree with me, would you not, that you personally instructed the employees of the Advisors not to execute the very trades that Mr. Seery identifies in this email, correct?" Answer, "Yes."
Is that the answer you gave back on January 8th?
A I have corrected this half a dozen times.
Q Okay. When you said you corrected it, let me ask you this, is that because instead of saying that the letter shouldn't have referred to the refusal to settle trades, that -- that it would be more appropriate that you instructed Advisors' employees not to execute the trades?
A No, that is not correct.
MR. MORRIS: Can we go to Page 73, please?

BY MR. MORRIS:

Q Were you asked these questions and did you give these answers? Question, "And you personally instructed, on or about December 22, 2020, employees of the Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY and AVYA. Right?" Answer, "Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions to settle trades that occurred, but that's a different ball of wax." "Okay." Question, "But you did instruct them not to execute trades that had not yet been made. Right?" Answer, "Yeah. Trades that I thought were inappropriate for no business purpose, I -- I told them not to execute."

Was that truthful testimony at the time you gave it?

A No. It's -- this is part of the -- this is part of the clarification from 6 or 8 lines ago or 10 or 15 lines ago. It's all the same. I was in a truly emotional disapproving state during this part of the deposition. I believed it was against the Advisers' Act and Seery was intentionally causing harm to the CLOs. And I stopped the trades around Thanksgiving. I called the traders. I specifically stopped them.

Once the TRO was in effect, I respected the TRO. I respected the Court. I did not call anybody. There's no evidence of me calling anybody. No one said I called anybody.

I just sent one email to Jason Post, a non-Highland employee, that he should look at the trades. And all this gobbledygook is -- is -- for the last 10 or 15 lines is the same question that I've clarified half a dozen times.

Q Okay. That's fine. Let's talk about some of your communications with the Debtor's employees.

MR. MORRIS: I apologize. Before I -- I'm going to move to the next and last topic, Your Honor, but this will be a little bit -- while longer, and I just wanted to check and make sure, I don't know if the Court wanted to take a short break. I'm okay. Or if the witness did. We've been going for a while.

THE COURT: All right. Let's take a ten-minute break. It's 11:40 Central time. We'll come back at 11:50.

MR. MORRIS: Okay. Thank you, Your Honor.

THE CLERK: All rise.

(A recess ensued from 11:40 a.m. until 11:52 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right. We are going back on the record in the Highland matter.

Mr. Morris, are you ready?

MR. MORRIS: I am, Your Honor.

THE COURT: All right. Mr. Dondero, are you ready to go forward? (No response.) Mr. Dondero, are you there?

MR. WILSON: Mr. Dondero will be on his line

momentarily. He's attending from a different room so we don't have feedback issues.

THE COURT: All right.

(Pause.)

THE COURT: All right. Are we almost ready, Mr. Wilson? You're on mute.

MR. WILSON: I believe so, Your Honor. He -- he walked out of our room right before you came on and said he was going to run to the restroom and go back to his room. So I think it should just be a second.

(Pause.)

THE WITNESS: I'm back.

THE COURT: All right. Mr. Dondero, you're still under oath.

Mr. Morris, you may proceed. (Pause.) Mr. Morris, now you're on mute.

MR. MORRIS: Thanks for letting me know.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Mr. Dondero, you understand that the TRO prevented you from communicating with any of the Debtor's employees except as it specifically related to shared services to affiliates owned or controlled by you. Correct?

A Well, shared services broadly, as I would -- I would describe it. And -- yes. But -- but the -- the proposal for

quite a while, for months, was shared services partly to affiliates but partly to a new entity also.

MR. MORRIS: Okay. Can we pull up Exhibit 11, please, from the Docket No. 128? And if we can go to Page -- the bottom of Page 2, just to make sure that we're on the same point here.

BY MR. MORRIS:

Q Paragraph 2 says, James Dondero is temporarily enjoined and refrained from, little (c) at the bottom, 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.

Do you see that?

A Okay. That's correct as far as it goes, but yes.

Q Okay. And there's nothing ambiguous to you about the language that's in the order, correct?

A That's correct. That -- yes.

Q And you personally don't have a shared services agreement with the Debtor, do you?

A Not at this -- no -- with the Debtor. No, I don't. Not with the Debtor.

Q Okay.

A No.

Q And the Bonds Ellis firm only represents you in your individual capacity in the bankruptcy case, right?

A Yes.
Q The Bonds Ellis firm doesn't represent any entity that is owned or controlled by you. Right?
A Correct.
Q So the Bonds Ellis firm doesn't represent any entity owned or controlled by you that's party to a shared services agreement with the Debtor. Correct?
A I believe that's correct.
Q Okay. And Douglas Draper is a lawyer who represents the Get Good and Dugaboy Investment Trusts. Right?
A Yes.
Q And you're a lifetime beneficiary of each of those trusts, correct?
A For Dugaboy, yes. For Get Good, I'm not sure.
Q Okay. To the best of your knowledge, neither the Get Good nor the Dugaboy Investment Trust ever had a shared services agreement with the Debtor, correct?
A No. They didn't have a formal agreement.
Q Okay. And Scott Ellington is not your personal lawyer. Is that right?
A Not in this bankruptcy.
Q Okay. He was not your personal lawyer in December 2020, correct?
A No.
Q He never represented you personally. Scott Ellington, as

a human being, never represented Jim Dondero as a human being at any time after the petition date. Fair?

A I don't know how to answer that with regard to settlement counsel. I -- in his role as settlement counsel, I'm not a lawyer, who does he work for when he's been tasked with being settlement counsel and he can talk to all parties on behalf of all parties in order to get a deal done? I don't know -- I don't know how to describe that role.

Q To the best of your knowledge, has Mr. Ellington ever been employed by anybody after the petition date other than the Debtor?

A I don't believe so.

Q Did you ever retain Mr. Ellington to represent you?

A Not -- not formally, but in his role as settlement counsel, I believe he was in some ways trying to represent all parties to try and kick a deal to the altar, so to speak.

Q Did he owe you a duty?

A I don't think in a classic -- I don't -- that -- I don't know. That's a legal -- I don't want to make a legal interpretation.

Q You've represented -- you've retained and engaged lots of lawyers and law firms over time. Is that fair?

A Yes.

Q Did you engage or retain Mr. Ellington at any time after the petition date?

A Well, I mean, very recently, he's heading up our shared services group or our shared services entity. But again, I don't know how to answer. The role of settlement counsel was an in-between role that I don't think it was documented formally, so I don't know how to -- I don't know how to answer that.

Q When did -- have you -- has Mr. Ellington been hired by you or any company you own or control since the time that he was terminated in early January?

A No. But he's the owner of the entity that houses a lot of the employees that migrated over.

Q Okay. So I want to -- I want to try to clear this up. I'm not asking you about settlement counsel. It's a very, very specific question. Did James Dondero ever retain or engage Scott Ellington to represent him? Did you ever engage or retain Scott Ellington for the purpose of providing legal advice to you?

A And that's the question I'm struggling with, because I believe, as settlement counsel, he was representing -- trying to represent multiple parties to strike a deal.

Q Did you ever pay him any money for services rendered to you in your individual capacity?

A No.

Q Did you ever give him anything of value in exchange for legal services rendered by him to you in your individual

capacity?
A No.
Q Did you ever sign an engagement letter with Scott Ellington pursuant to which he provided legal services to you in your individual capacity?
A No.
Q How about Isaac Leventon? Did Isaac Leventon ever represent you in your individual capacity?
A You mean since the advent of the bankruptcy, right? Yeah, no.
Q Okay. Let's say after the TRO was in place. Did Mr. -- did you ever retain or engage Mr. Leventon to provide legal services to you in your individual capacity?
A No.
Q Between December 10, 2020, the date the TRO was entered, and January 8, 2021, excuse me, the date the TRO was converted to a preliminary injunction, you communicated with certain of the Debtor's employees about matters that did not concern shared services, correct?
A No.
Q No, it's your testimony that all of your communications concerned shared services?
A Yes. Yeah, and shared services or the pot plan or in his go-between role where he would be used as a messenger by Seery or by me to get to Seery because I hadn't communicated

directly with Seery in six or seven months other than that interaction around Thanksgiving.

Q Sir, between the time the TRO was entered and the preliminary injunction was entered, you communicated with certain of the Debtor's employees about matters that were adverse to the Debtor's interests, correct?

A Absolutely not. I respectfully disagree with that characterization whenever it occurs.

Q Okay. After the TRO was entered, you and your lawyers at Bonds Ellis worked with Scott Ellington to identify a witness who would testify on your behalf in support of a motion against the Debtor, correct?

A I don't know what the witness was for. I know there was -- I know there was some back and forth on the witness, but I don't remember what the witness was for.

Q All right. Let's just see if we can get through this quickly.

MR. MORRIS: Can we put up Exhibit 48, please?

BY MR. MORRIS:

Q So this is December 11th. Do you see that?

A Yes.

Q The day after the TRO was entered into, correct?

A Yes.

Q It's sent from Mr. Lynn to Mr. Ellington and is entitled "Testimony," correct?

A Yes.
Q Mr. Ellington was the Debtor's general counsel at the time, correct?
A Among other things, yes.
Q In fact, Mr. Ellington was the Debtor's general counsel throughout the month of December 2020, to the best of your knowledge, correct?
A Yes, but not solely, yeah.
Q Was he -- was he a general counsel for somebody else?
A No, but he was also settlement counsel and he was also the go-between with Seery.
Q Sir, really, I respectfully ask that you listen to my question. To the best of your knowledge, Mr. Ellington was the Debtor's general counsel throughout the month of December 2020, correct?
A Yes.
Q Can you please read Mr. Lynn's email out loud?
A (reading) Scott, you are going to talk with John Wilson of our firm or have JP do so. He needs to speak today so we know who to put on the witness and exhibit list and will be waiting for a call. Thanks.
Q Now, again, the Bonds Ellis firm doesn't represent any party to a shared services agreement, correct?
A Well, they represent me and I'm on the other side of the shared services agreement we were trying to put together.

Q You're not a party to shared services agreements, are you, sir?
A No, but the solution that everybody was negotiating that fell apart that we had a hearing on a couple weeks ago, everybody was trying hard in good faith until negotiations failed to migrate the shared services in a way that would have resulted in $3 or $5 million to the Debtor. But the negotiations fell apart.
Q Sir, in this email from Mr. Lynn in which you're copied to the Debtor's general counsel the day after the TRO is entered, your lawyer is asking the Debtor's general counsel to have a conversation about a witness and exhibit list that your lawyers were putting together. Fair?
A That appears to be what it's about.
Q Okay. And the next day, the topic of identifying a witness who would testify on your behalf continued, correct?
A I don't know.
MR. MORRIS: Can we go to Exhibit 49, please?
BY MR. MORRIS:
Q This is an email string from Saturday evening, December 12th, in which the Bonds Ellis firm's -- firm brings you and Mr. Ellington into the discussion about identifying a witness who would testify on your behalf at the upcoming hearing, correct?
A Yeah, but I -- okay. I have no idea what this refers to,

though, or what this is in regard.
Q Well, if you look at Mr. Assink's email at the bottom dated December 12, do you see the subject is "Witnesses for Hearing"? Do you see that?
A Yes.
Q And he asks Mr. Wilson whether Mr. Wilson had heard from Ellington or Sevilla yet. Do you see that?
A Yes.
Q And he -- he says that he needs to let the other side know if you're going to call one of them as a witness. Isn't that right?
A Yes. I can read all that. But again, I don't know -- I don't know -- I have no idea what witness for what, if it represents -- and what the witness would represent and if it is in any way adverse to the Debtor. I have no idea.
Q Well, you're adverse to the Debtor, are you not?
A Well, I do not believe so. I mean, I -- I've been doing everything possible to try and preserve this estate as it's getting run into the ground. But no, I mean, I've -- I've done everything to try and maximize value.
Q Well, Mr. Lynn brings you and Mr. Ellington in the conversation on Saturday, December 20th, on the topic of witnesses for a hearing, right? That's -- that's what's happening at the top of the page? You and Mr. Ellington are now included, correct?

A Okay.
Q It's true; isn't that right?
A Right.
Q Okay. And this is the debate over whether to include Mr. Ellington or Mr. Sevilla on your witness list, correct?
A Again, I don't know with regard to what or for, you know -- I don't know if it's background context. I don't know if it's corporate rep. I don't know -- I don't know -- I have no idea what this is about.
Q Okay. Do you recall that the issue of identifying a witness who would testify on your behalf was resolved later that night?
A No.
MR. MORRIS: Can we go to Exhibit 17, please?
BY MR. MORRIS:
Q And if we start at the bottom, you'll see there's an email from Mr. Lynn to you and other lawyers at Bonds Ellis where he says the possible deal with the Debtor went nowhere, and I think he meant to say it looks like trial. Is that a fair reading of Mr. Lynn's email to you on the evening of December 12th?
A Yes.
Q And then if we scroll up he says, quote, that said, we must have a witness now.
Do you see that?

A Yes.
Q And the "we" there refers to you and the Bond Ellis firm, right? You guys needed a witness now. Is that fair?
A I don't know.
Q Well, if you look -- if you look up at the top, Mr. Ellington responds. So this is an email from Mr. Ellington to you and your personal lawyers at Bonds Ellis. Do I have that right?
A Yes.
Q And in that email, Mr. Ellington responds to Mr. Lynn's request for a witness and he identifies Mr. Sevilla, correct?
A Yes.
Q And Mr. Ellington told your lawyers that he would instruct Mr. Sevilla to contact them the first thing in the morning, correct?
A That seems to be what it says.
Q Okay. Is there any exception in the TRO that we looked at that you're aware of that would allow you and your lawyers to communicate with Mr. Ellington for the purpose of having Mr. Ellington identify a witness who would testify on your behalf against the Debtor?
A Again, I go back to his role as settlement counsel and go-between with Seery. If you look at the subject line here, it says "Possible Deal." I -- I think this is all perfectly within the scope and not adverse to the Debtor, but I'm

willing to be educated if you think otherwise.

Q Sure. I'll try. Let's go back to Mr. Lynn's email at the bottom. The email is titled, Possible Deal, and what he says is, quote, the possible deal with the Debtor went nowhere. It looks like trial.

Does that refresh your recollection that this string of communications had nothing to do with a deal, but it had to do with a trial, and it specifically had to do with your lawyers communicating with Mr. Ellington to identify a witness who would testify on your behalf against the Debtors?

A That's not how I view this and that's not how I view Ellington's role.

Q Okay. I'm going to ask you again. Very simple. And I'll put it back up on the screen if you want.

MR. MORRIS: In fact, let's do that. Let's go back to Exhibit 11. And let's look at Paragraph 2(c).

BY MR. MORRIS:

Q And if you can tell me, right, Paragraph 2(c) prohibited you from communicating with any of the Debtor's employees except as it specifically relates to shared services currently provided to affiliates owned or controlled by you. Do you see that?

A Yes.

Q Okay. Does that provision authorize you and your lawyers to communicate with the Debtor's general counsel for the

purpose of identifying a witness who would testify on your behalf, your personal behalf, against the Debtor?

A Again, we haven't established that it's on my behalf against the Debtor, so I can't say -- I can't say yes to that. And again, you know, Scott Ellington, up until the day he was terminated, was settlement counsel and go-between for Seery, and that role never changed, even after the TRO was put into place. And Seery even acknowledged it after the TRO was put in place and continued to use Ellington as a go-between.

Q So, so the Bonds Ellis --

THE COURT: All right. All right. Let me just interject again,--

MR. MORRIS: -- firm represents --

THE COURT: -- because here we go again with the narrative answer way beyond yes or no. Here is a big, big concern I have. You both estimated three and a half hours, but if I continue to get the long narrative answers, I don't think it's fair to count all of this against Mr. Morris. Okay? So, Mr. Wilson, what can we do about this? We've had this witness on the stand since 10:24 minus 14 minutes, so we're getting close to two hours. But again, you know, I've been, I think, extremely overly-patient with allowing these narrative answers.

So, Mr. Wilson, can you help us out here and -- I mean, I don't know how many more times I can say it, that yes, no, and

then when it's Mr. Wilson's time to cross-examine you, to examine you, Mr. Dondero, that's when you can give all of these more fulsome answers. All right? We're going to be here much beyond today if we don't get this under control. All right?

So, Mr. Wilson, --

MR. MORRIS: I appreciate --

THE COURT: Mr. Wilson, please make sure your client understands this. Can you add to this? Can you let him know you're going to examine him later?

MR. WILSON: Yeah, I agree -- I agree with that, Your Honor, but I also would just state that a lot of Mr. Morris's questions don't call for a simple yes or no answer, and I think Mr. Dondero maybe needs to change his response to "I can't answer that yes or no."

THE COURT: Well, you can't coach your client like that. Okay?

MR. MORRIS: Your Honor? Your Honor, with all due respect, every single question I'm asking is a leading question. When it ends "Is that correct?" or "Is that right?" he either says yes, it is, or no, it's not.

THE COURT: All right.

MR. MORRIS: Then I'll have the decision as to what to do at that point. Every single question I'm asking is leading.

THE COURT: All right. Well, I tend to agree with that, Mr. Wilson. All right?

So, Mr. Dondero, you've heard us say it a few times now. Yes. No. I understand you want to say more in many situations, but Mr. Wilson can get at that later when he examines you. Okay?

Continue, Mr. Morris.

MR. MORRIS: Thank you, Your Honor.

BY MR. MORRIS:

Q On this series of emails that we've looked at, these last three exhibits that are to and from the Bonds Ellis firm, the Bonds Ellis firm only represents you in your individual capacity, correct?

A Correct.

Q And the Bonds Ellis firm was communicating with Mr. Ellington in order to have Mr. Ellington identify a witness for their witness and exhibit list, correct?

A Yes.

Q Okay. At the same time you and your lawyers were communicating with Mr. Ellington about identifying a witness who would testify on your behalf, you and your lawyers were also engaged in discussions about entering into a common interest agreement among you, certain entities in which you have an interest, and certain of the Debtor's then-employees, correct?

A I have no idea -- conversations like that happened. I don't know when they occurred.
Q Okay. Let's see if we can put a time on it.
MR. MORRIS: Can we please put up Exhibit 24?
BY MR. MORRIS:
Q And starting at the bottom, you'll see there's an email string from Deborah Heckin (phonetic) on behalf of Douglas Draper. Do you see that?
A Yes.
Q And this email string is dated December 15th, right after the TRO was entered into?
A Why isn't this privileged?
Q We'll talk about that in a moment, but --
A What was your question?
Q -- be that as it may, this email string is dated December 15th, after the TRO was entered into, correct?
A Yes.
Q Okay. And you'll see that Mr. Draper, or at least on his behalf, attaches a form of a common interest agreement. Do you see the reference to that in his email?
A Yes.
Q Okay. And Mr. Lynn responds, if we scroll up, and he includes Scott Ellington on this email, right?
A Yes.
Q And Mr. Lynn informs Mr. Ellington and his colleagues that

Bryan or John would review the agreement. Is that -- is that right?

A Yes.

Q And if we scroll up, Mr. Assink then later that day sends your lawyer's comments -- sends your lawyer's comments to his colleagues and to Mr. Ellington, right?

A Yes.

Q And Mr. Ellington then forwards the revised common interest agreement to Mr. Leventon, right?

A Yes.

Q As contemplated at that time, you and the Get Good Trust and the Dugaboy Investment Trust and certain of the Debtor's then-employees were engaged in discussions about entering into a common interest agreement, correct?

A Yes.

Q And those discussions continued for a while in December; isn't that right?

A I believe so.

Q You're familiar with the law firm Baker & McKenzie, correct?

A Generally.

Q That firm has never represented you or any entity in which you have an ownership interest, correct?

A Boy, I don't know. It depends on how far back you went, but I don't know.

Q To the best of your knowledge, Baker and McKenzie has never represented you or any entity in which you have an ownership interest, correct?
A Don't know.
Q Okay. In December, there was an employee group. There was a group of Debtor employees that were known as the Employee Group; is that right?
A I believe there was a general employee group and then there was a senior management group.
Q Okay.
A I don't know what they were called.
Q And Mr. Ellington and Mr. Leventon were part of the group who were considering in December changing their counsel from Winston & Strawn to Baker & McKenzie, correct?
A I -- I only have -- I don't know for sure. That sounds correct, but I don't know for sure.
Q All right. But that was your belief at the time, right?
A I don't remember.
Q Well, because of that, you specifically asked Mr. Leventon for the contact information for the lawyers at Baker & McKenzie, right?
A I remember asking Isaac for Clemente's number. I may have asked -- yeah, yeah, I think I -- I needed to speak to somebody at some point over there, so I did ask -- I asked somebody for the number. If I asked Isaac, it could have

been.

Q Okay.

MR. MORRIS: Can we put up Exhibit 20, please?

BY MR. MORRIS:

Q And this is -- that's Mr. Leventon at the top. Is that right?

A Yes.

Q And on December 22nd, you specifically asked him to send you Mr. Clemente's contact information as well as the Baker & McKenzie contact information, correct?

A Yes.

Q And this was a week after the -- after your lawyers provided their comments to the common interest agreement and Mr. Leventon -- Mr. Ellington forwarded the draft agreement to Mr. Leventon, right? That was December 15th, so this is a week later?

A Yes.

Q And Mr. Leventon was an employee of the Debtor at the time, correct?

A Yes, I believe so.

Q And you specifically wanted the contact information from Baker & McKenzie in order to help Mr. Draper coordinate the mutual shared defense agreement that was the subject of the December 15th email, right?

A I don't know if that was the purpose.

MR. MORRIS: Can we go back to the transcript line, Line -- Page 97, please? Down at Line 16. To be clear, I'm reading at the January 8th hearing from the deposition transcript.

BY MR. MORRIS:

Q But can you confirm for me, sir, that when asked the following question, you gave the following answer? Question, "Why did you want the Baker & McKenzie contact information?" Answer, "I was trying to help Draper coordinate the mutual shared defense agreement, period."

Is that your -- was that the answer that you gave in your deposition?

A Yes.

Q And is that the answer that you confirmed at the preliminary injunction hearing on January 8th?

A I don't remember.

Q Are you aware of any exception in the TRO that would permit you and your lawyers to communicate with the Debtor's employees about entering into a common interest agreement?

A To the extent Scott Ellington was continuing as settlement counsel, I -- I viewed these types of things as very appropriate.

Q The only exception in the TRO was for shared services, right?

A Shared services, yes, but shared services broadly

incorporates a lot of things, in my opinion.
Q And in your opinion, it's perfectly appropriate for you to be discussing, after a TRO is entered that prohibits you from discussing anything with any of the Debtor's employees except for shared services, in your opinion, it's perfectly appropriate for you and your lawyers to be engaged in conversation with the Debtor's employees about possibly entering into a common interest agreement? That's your testimony?
A Yes.
Q Okay. Let's go back in time, December 15th. Do you recall writing to Mr. Lynn and Mr. Draper and Mr. Ellington about a conversation you had with Mr. Clubok, UBS's counsel?
A I don't remember, but I'm willing to be refreshed.
Q Okay.
MR. MORRIS: Let's do that, and put up Exhibit 50, please. Five zero.
BY MR. MORRIS:
Q This is an email that you wrote, correct?
A (no immediate response)
Q This is your email, sir?
A Yes.
Q Okay. Why did you decide to -- this is an email about a conversation that you had with Mr. Clubok, right?
A Yes.

Q And you understood at the time that Mr. Clubok represented UBS, right?
A Yes.
Q And at the time, you knew that UBS was going to appeal the settlement that had been entered into between the Debtor and Acis, correct? I'm sorry, between the Debtor and the Redeemer Committee?
A Yes.
Q Okay. And so the Debtor had entered into a -- you knew that the Debtor entered into a settlement with the Redeemer Committee, right?
A Yes.
Q And that settlement was approved by the Court, correct?
A I don't remember if it was ever scrutinized at all. It wasn't -- I don't know if it was approved.
Q Well, this email is about the appeal of the approved order, the order approving the settlement, right?
A Appears to be.
Q Okay. And so UBS was challenging the very agreement that the Debtor wanted to enter into, right?
A Yes.
Q And you -- and you decided, after the TRO was entered into, to bring Scott Ellington into the discussion between you and your lawyers about supporting UBS and otherwise getting evidence against Mr. Seery. Is that right?

A We already had the evidence against Seery not seeking court approval, being inept in asset sales. We already had all that evidence.

Q But you're bringing -- you voluntarily brought Mr. Ellington into this discussion; isn't that right?

A Because Ellington was settlement counsel. We were trying to push -- he was trying to push all parties to some kind of reasonable settlement before the estate got wiped out by tripling everybody's claims.

Q And you thought it would be helpful to bring Mr. Ellington into a conversation where you're discussing with your lawyers supporting UBS in their objection to the Debtor's settlement and to -- and to give him evidence of Seery's ineptitude and improper asset sales? You think that was going to advance the cause of the settlement, right?

A Yes.

Q Okay. And again, there's no -- there's no exception in the TRO for settlement, right? That's just your own thinking, fair?

A Since the summertime, more than a few people have testified Scott Ellington was settlement counsel.

MR. MORRIS: I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:

Q Is there anything in TRO that you are aware of that

authorizes you to speak with Mr. Ellington in his capacity as so-called settlement counsel?

MR. WILSON: Objection to the extent it calls for a legal conclusion.

THE COURT: Overruled.

MR. MORRIS: I'll reframe the question. I'll reframe the question, Your Honor.

THE COURT: Okay.

BY MR. MORRIS:

Q Do you have any -- is there anything that you are aware of in the TRO that would permit you to speak with Mr. Ellington as settlement counsel?

A I think it's trickery to try and say it takes that away. That's my opinion.

Q Okay. But other than your opinion, you can't point to anything in the TRO that you're relying upon that would permit you to speak with Mr. Ellington as settlement counsel. Fair?

A Other than broadly, settlement or not settlement all filters into shared services and whether or not we buy the employees, don't buy the employees, etc.

Q Okay. This email has absolutely nothing to with shared services, right?

A It's one step removed but ultimately leads into it.

Q The settlement between the Debtor and the Redeemer Committee has nothing to do with shared services, correct?

A Ultimately, the settlement with Redeemer and Clubok had everything to do with shared settlement. With shared services.

Q All right. Maybe your lawyer will put that up on the screen later.

After the TRO was entered, you also communicated with one or -- one of the Debtor's employees to make sure that she didn't produce the Dugaboy financial statements to the U.C.C., correct?

A Yeah. They weren't properly requested, and they weren't requested of me.

Q Sir, you communicated with one of the Debtor's employees to make sure she did not produce the Dugaboy financial statements to the U.C.C. without a subpoena, correct?

A That was my -- the advice of counsel to say exactly that in response, and I think ultimately -- I think ultimately counsel was okay with it. They just wanted to review the documents first.

Q Dugaboy's financial statements were maintained on the Debtor's server, correct?

A Yeah, and I think most of them weren't even password-protected.

Q You communicated with at least one employee concerning the production of the Dugaboy financial statements, correct?

A Under advice of counsel, yes.

Q And that's Melissa Schrath, right?
A Yes.
Q Ms. Schrath was employed by the Debtor as an executive accountant in December 2020, correct?
A Yes, solely working on mine and Mark Okada's financials.
Q She's the one -- she's the Debtor employee who maintained the Dugaboy financial statements, right?
A Yes.
Q And on December 16th, after the TRO was entered, you communicated with Ms. Schrath for the very specific purpose of instructing her not to produce the Dugaboy financials without a subpoena, correct?
A I gave her a legal response that came directly from my lawyers from an improper -- what my lawyers viewed as an improper request improperly done.
Q Dugaboy had their own lawyer, right? Mr. Draper?
A I -- uh, I believe -- I believe he was coming on board or up to speed around that time.
Q Yeah. Why didn't Mr. Draper take a hold of this issue? Why did you do that?
A I think, again, I think he was just coming up to speed at that point. I think ultimately he was okay with it; he just said he wanted to review the documents first. But I think he was agreeable in trying to work with you guys.
Q He was, in fact. So why did you, instead of letting him

do his job on behalf of his client, the Dugaboy Investment Trust, why did you, after the TRO was entered, communicate with the Debtor's employees to give instructions not to produce the Dugaboy financial statements without a subpoena? Why did you do that?

A Those words and requiring a subpoena were the specific legal advice I got from counsel at Bonds Ellis before Draper was up to speed on the issue. And then when Draper got up to speed on the issue, which I think was only a couple days later, he tried hard to work with you guys.

Q And he never asked for a subpoena, did he?

A I -- I don't believe he did. I think he asked to just review stuff first.

Q Did you ever tell him that you had made a demand for a subpoena, that -- withdrawn. Did you ever tell Mr. Draper that you had instructed one of the Debtor's employees not to produce the documents without a subpoena?

A I -- I think Draper was fully -- fully informed of everything that happened with regard to the Dugaboy financials before he got involved. Yes.

Q So, so for all of the communications that occur after the time that you instruct Ms. Schrath not to produce the documents without a subpoena, would it surprise you to learn that Mr. Draper never once mentions the subpoena? Never once mentions that the documents shouldn't be produced without a

subpoena?
A Different -- different lawyers have different views at different times. I don't know what else to tell you.
Q All right. Let's just confirm for the record.
MR. MORRIS: Can we please put up Exhibit 19?
BY MR. MORRIS:
Q And that's Ms. Schrath at the top; is that right?
A Yes.
Q And this is, if we scroll down a bit, this is where you give her the instruction after the -- you communicate with her -- withdrawn. This text messages show that you communicated with Ms. Schrath, one of the Debtor's employees, after the TRO was entered into, for the purpose of instructing her not to provide the Dugaboy details without a subpoena, correct?
A Yes.
Q There is no exception in the TRO that you are aware of that permits you to communicate with any of the Debtor's employees about the production of documents, right?
A Regarding a personal entity that's not in bankruptcy and not subject to the estate, it -- this -- I believe this was appropriate. And again, the advice I got from counsel.
Q Sir, are you aware of anything in the TRO that permits you -- is there any exception in the TRO that permits you to give instructions to one of the Debtor's employees about whether and how to produce documents that are on the Debtor's system?

MR. WILSON: Objection. It calls for a legal conclusion.

THE COURT: Overruled.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q Okay. You can't point to anything as we sit here right now, right?

A Don't know.

Q And again, Dugaboy is not party to a shared services agreement, correct?

A Not formally. It is -- I think -- I believe it is now.

Q On the same day that you were instructing Ms. Schrath not to produce Dugaboy financials without a subpoena, you were also communicating with Mr. Ellington about providing leadership with respect to the coordination of counsel for you and the various entities owned and controlled by you. correct?

A I don't -- I think that may be a mischaracterization of the leadership email. Let's go to that, please.

Q Okay.

MR. MORRIS: Exhibit 18, please.

BY MR. MORRIS:

Q On December -- December 16th, Mr. Draper wrote to you, at the bottom of the exhibit, Mr. Draper wrote to you and to Mr. Lynn, correct?

A Yep.
Q And again, Mr. Draper represents Dugaboy and Get Good, right?
A Yep.
Q And the subject matter of his email is a List for a Joint Meeting. Do you see that?
A Yes.
Q And Mr. Draper proceeded to list a number of lawyers and entities, correct?
A Yes.
Q And first is John Kane, counsel to the DAF, right?
A Yes.
Q And then you have George Zarate (phonetic), who was counsel to HCM Advisor, correct?
A Yes, sir.
Q And third is Lauren Drawhorn, counsel to NexPoint, correct?
A Yes.
Q Fourth is Mark Maloney, counsel to CLO Funding, correct?
A Yes.
Q And last is David Neier, who was then counsel to certain of the Debtor's employees, correct?
A Yes.
Q And Mr. Draper specifically asked you and Mr. Lynn whether anyone should be added or removed from the list, correct?

A Yes.
Q And neither you nor Mr. Lynn identified anyone to be added or removed, correct?
A No.
Q And then you, you forwarded the email string to Mr. Leventon -- Ellington, correct?
A Yes.
Q And so you're the one who's sharing your attorney-client communications with Mr. Ellington, right, in this email?
A Yes.
Q Okay. And he's not your lawyer, right?
A He's settlement counsel.
Q Yeah. Okay. Why don't you read what you wrote to Mr. Ellington?
A (reading) I'm going to need you to provide leadership here.
Q But reviewing this email, at least as of the January 8th hearing, you had no recollection of why you forwarded the email string to Mr. Ellington and why you told him you needed him to provide leadership, correct?
A Correct.
Q But Mr. Ellington did respond; isn't that right?
A Yeah. I think he just said "I'm on it" or "I'll handle it" or something.
Q Okay. Are you aware of any exception in the TRO that

would permit you to ask Mr. Leventon -- Ellington to provide leadership in the context of working on a joint meeting that would include lawyers for you and any entities -- and various entities owned or controlled by you?

A I -- I don't know. I don't have any answers other than some of the narrative ones I've given before.

Q Okay. And again, there's no lawyer on this whole email string that represents any entity that's subject to a shared services agreement, right?

A That's not true.

Q I apologize. Let me rephrase the question. There's no lawyer who sent, received, or were copied on any of these emails who represents an entity that was subject to a shared services agreement, correct?

A That's not true.

Q Well, does Mr. Lynn or Mr. Draper represent an entity who's subject to a shared services agreement?

A No, but the other lawyers referenced in the text of the email, almost all of them are.

Q Right. I'm just -- I'm asking you very specifically just about the people to whom this email string was sent or received from. Right? Sent to or received from. And they only include Mr. Draper and Mr. Lynn, right? They're the only ones who were --

A Yes.

Q Right?
A Yes.
Q And neither one of them represents a party to a shared services agreement, right?
A Not a formal one, correct.
Q Right. So there's nobody on this email string where you're asking Mr. Ellington to provide leadership, there's nobody who's sending or receiving this email string that represents a party to a shared services agreement, right?
A No formal -- yes. Those three people, there's no formal shared services agreement.
Q Later on in December is when you learn that Mr. Seery was again seeking to trade in certain securities held in the CLOs, correct?
A Yes.
Q And as soon as you learned that Mr. Seery was again seeking to trade in certain securities, you sent an email to Mr. Ellington letting him know that, right?
A Oh, yes. Yes.
Q And this is the information that caused you to personally instruct employees of the Advisors not to execute the trades that Mr. Seery had authorized, correct?
A No. We've gone through this before. I did nothing in the December 20th trades to do anything to interrupt or speak with any Highland employees. I sent one email to Jason Post to say

you should look into this. It was -- it was a completely different interaction. It was respectful of the TRO. It was completely different than the November trades.

But the trades were the same. He handed a couple million-dollar lawsuits to the Funds, he sold things during the least liquid week of the year, the day before Thanksgiving and the day before Christmas, and he was purposely trying to push losses to investors.

MR. MORRIS: I move to strike, Your Honor.

THE COURT: Sustained. And I'm just letting you know it's 12:50. We're taking a break at 1:00 o'clock.

MR. MORRIS: Yeah, that's fine. I think I should be done right there, Your Honor.

BY MR. MORRIS:

Q The next day, on December 23rd, you had a call among you, Scott Ellington, Grant Scott, and certain lawyers representing various entities you own and control, correct?

A Yeah. I don't remember specifically, but yeah, I remember a couple conference calls.

Q Yeah.

MR. MORRIS: Can we go to Exhibit 26, please?

BY MR. MORRIS:

Q You'll see the subject matter is "It appears Jim will be available for a 9:00 a.m. Central time conference call."

Do you see that?

A Yes.
Q Okay. And this email string is between and among employees of the Advisors, Grant Scott, Scott Ellington, and outside counsel to the Advisors, correct?
A Can you scroll up or down? I mean, I --
Q Sure.
A What was the question again regarding the people?
Q Yeah. The folks on this email string are employees of the Advisors, outside counsel to the Advisors, and Scott Ellington, right?
A I'm sorry. I'm struggling to see Ellington on this one.
Q Oh, it's at the top. There you go.
A Okay.
Q And Mr. -- and Grant Scott, right?
A Yes.
Q And Grant Scott is the director of the DAF, correct?
A Yes.
Q And this is the exact same time that K&L Gates are sending the letters to the Debtor concerning the CLOs, correct?
A I believe it's around that same time.
(Interruption.)
MR. MORRIS: Your Honor, somebody's not on mute.
THE COURT: Yeah, who is that, Mike? Can you tell?
THE CLERK: It was one of the call-ins. I just muted them.

THE COURT: Okay. It was one of the call-ins. We've muted them.

MR. MORRIS: Okay. Yeah.

BY MR. MORRIS:

Q It's your understanding that those letters -- in those letters, the Advisors and Funds represented by K&L Gates asked that the Debtor not trade in securities on behalf of the CLOs, correct?

A Yes.

Q And this was just days after the Court dismissed as frivolous the motion that they brought seeking the exact same relief?

A I believe it was about that same time frame, yes.

Q Okay. So, all in this same time frame, December 22nd, December 23rd, K&L Gates is sending those letters and Mr. -- and Mr. Ellington is participating in conversations with you and lawyers for the Advisors and Mr. Scott, right? This is all happening in the same two or three days?

A I continue to struggle to see the issue, but yes.

Q Okay. You were aware of the letters that K&L Gates sent at the time they sent them, correct?

A Yes.

Q Okay. And despite the outcome at the December 16th hearing, you were supportive of the sending of those letters, right?

A I still believe they are bona fide. I still believe we just -- maybe not as good a presentation to make the Court understand. But yes, I still believe they're bona fide and were done in good faith.

Q Okay. And so you think it was a problem with presentation at that hearing; is that right?

A Yeah. I mean, you have -- yes. I believe you have no business purpose booking losses for investors that asked that their accounts not be traded while they were being migrated, and instead they were handed a bunch of losses and then they've been, they've, in a backdoor way, lost control by the Advisor buying assets without court approval to block the DAF and the retail funds' rights. I mean, it's craziness.

Q And then you brought Mr. Ellington into the discussion about these letters specifically; isn't that right?

A No. I -- I remember my main --

MR. MORRIS: Your Honor, it's a --

THE COURT: Okay.

THE WITNESS: Well, the answer is no.

THE COURT: It's a yes or no, a yes or no question.

THE WITNESS: No. The answer is no.

MR. MORRIS: Okay. Can we go to Exhibit 52, please?

BY MR. MORRIS:

Q And if we look at the bottom and scroll up, the email string begins with some back and forth between your lawyers

and my colleague, Mr. Pomerantz. Do you see that? And they discuss specifically the K&L Gates letters.

A Yep.

Q Okay. And then they're forwarded to you and you respond to Mr. Lynn and to your lawyers, right?

A Yep.

MR. MORRIS: Can we scroll up just a bit more?

BY MR. MORRIS:

Q And you write to your lawyers -- now, this is -- this is at this time a very private conversation between you and your lawyers, right? And -- and --

A Yeah.

Q And you could share whatever view you had at the time with your lawyers, because at least as of December 24th at 5:53, you thought that that would be a protected conversation and communication, correct?

A I don't know what I thought then.

Q Well, you told Mr. Lynn, "Who knows how Jernigan reacts." Do you see that?

A Yes.

Q And that's because you were unsure of how Judge Jernigan was going to react; is that right?

A Yes.

Q You didn't express the view to your lawyer on December 24th that Judge Jernigan was going to rule against you because

she was biased, did you?
A I don't know if that's in this email chain.
Q I'm happy to look at it from top to bottom.
A I -- but I -- I don't know.
Q And it's certainly not in this email, right? You didn't -- you didn't tell -- you didn't tell your lawyers in this private conversation that you had any concerns about Judge Jernigan's bias, right?
A Not -- not here.
Q And you didn't -- you didn't say anything in this email on December 24th that you thought Ms. -- that you thought Judge Jernigan was anything but partial, right?
A The issue is not addressed in this email.
Q In fact, you told -- you told your lawyers just the opposite, didn't you? Isn't that right?
A No.
Q You told your lawyers "Who knows how Judge Jernigan is going to react;" isn't that right?
A Yes.
Q Okay. And then you forward your private communications with your lawyers to Mr. Ellington, correct?
A Yes.
Q And in your communications with Mr. Ellington, you included the K&L Gates letters, correct?
A Yes.

Q Are you aware of anything in the TRO that would allow you to communicate with Mr. Ellington concerning the letters between the Debtor and the K&L Gates clients?
A I don't know. Goes back to settlement counsel.
Q Okay. You had other communications with Mr. Ellington on Christmas Eve, didn't you?
A I did.
Q And in fact, you communicated with Mr. Ellington about your decision to object to the Debtor's settlement with HarbourVest; isn't that right?
A Yes.
Q Okay.
MR. MORRIS: Can we just see that for the record, Exhibit 21?
BY MR. MORRIS:
Q You recall that, in late December, the Debtor filed notice of a settlement it reached with HarbourVest, correct?
A Yeah.
Q And in this email string, Mr. Assink, one of your personal lawyers, purported to summarize the terms of the settlement for Mr. Lynn and other attorneys at Bonds Ellis. Do you see that at the bottom?
MR. MORRIS: Yep, right there.
THE WITNESS: Yes.
BY MR. MORRIS:

Q And then Mr. Lynn forwarded Mr. Assink's email to you, correct?
A Yep.
Q And you responded to your lawyers and told him to make sure that you objected, correct?
A Yes.
Q You didn't like the terms of the deal; isn't that right?
A Well, at the time -- at the time, we didn't realize that -- yeah. And -- yes. It was -- it was a ridiculous way of destroying the estate, in our opinion.
Q Okay. So, so you were adverse to the Debtor at this moment in time with respect to the Debtor's decision to enter into the HarbourVest settlement, correct?
A We disagreed with the HarbourVest settlement is as far as I want to answer that question.
Q And you wanted to challenge the Debtor's decision to reach an agreement on the terms set forth in Mr. Assink's email, correct?
A Yes.
Q And you decided to forward your communications with your lawyers on the topic of your decision to object to the HarbourVest settlement to Mr. Ellington on Christmas Eve, correct?
A Yes.
Q Okay. Can you identify anything in the TRO that would

authorize you to communicate with the Debtor's employees after the TRO was entered into about your decision to object to the HarbourVest settlement that the Debtor was seeking to enter into?

A I don't know. I was relying on Ellington's role as settlement counsel.

Q Okay.

THE COURT: All right. We're going to have to stop. Are you almost through, Mr. Morris?

MR. MORRIS: I have one more document.

THE COURT: Okay.

MR. MORRIS: Literally three -- two or three minutes.

THE COURT: Okay.

BY MR. MORRIS:

Q You had one more communication on Christmas Eve with Mr. Ellington; isn't that right?

A Uh-huh.

Q Okay. And this is -- this is where you told him about the Debtor's letter evicting you from the offices and about their demand for your cell phone, right?

A I -- please refresh me.

Q Okay.

MR. MORRIS: Exhibit 53, please.

BY MR. MORRIS:

Q On December 23rd, the Debtor sent your lawyers that letter

that we looked at earlier giving notice of eviction and demanding the return of your cell phones, correct?

A Yep.

Q And then the next day, on December 24th, Mr. Lynn forwarded the letter to you, correct?

A Yep.

Q And Mr. Lynn forwards that to you and he provides advice about the contents of the cell phone, correct?

A Yes.

Q And you pass this advice, along with the letter, to Mr. Ellington, correct?

A Yes.

Q This email string and the letter have nothing to do with shared services, correct?

A Okay. Broadly, shared services includes everything trying to get to a settlement of what to do with the employees. And so I, again, I view it broadly as yes.

Q Okay. Mr. Lynn's advice that you're passing along to Mr. Ellington is limited to the cell phone, correct?

A I think he has the same view that I do regarding Ellington as settlement counsel should be -- should be restricted and not open up a window into all legal communication with me and my lawyers. But obviously you're taking a different view.

MR. MORRIS: I move to strike. Real simple. Last question, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Mr. Dondero, you forwarded -- the email that you forwarded to Mr. Ellington included the advice from your lawyer about your cell phone and the letter that evicted you from the Debtor's offices and made the demand for the cell phones back, correct?

A Yes.

Q Okay.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. It's --

MS. SMITH: Your Honor, this is Frances Smith. Before we go on break, I just wanted to give Your Honor one piece of good news that might help save you some time this afternoon.

THE COURT: Okay.

MS. SMITH: We now have an agreement with Mr. Dondero's counsel that they will not be calling Mr. Leventon, and the Debtor has already agreed that they would not be calling Mr. Leventon. So if we could please release Mr. Leventon for the rest of the afternoon, we would appreciate that, Your Honor.

THE COURT: All right. Mr. Wilson, you confirm?

MR. WILSON: Yes, Your Honor.

THE COURT: All right. Well, Mr. Leventon is

excused. Thank you for that.

MS. SMITH: Thank you, Your Honor.

THE COURT: All right. It's 1:06. We're going to take a 30-minute break. We'll come back at 1:36.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(A luncheon recess ensued from 1:06 p.m. until 1:42 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. All right. We are going back on the record, a few minutes late, 1:42, in Highland Capital Management.

Mr. Morris had just passed the witness, Mr. Dondero, to Mr. Wilson. And remember, we were clear earlier on that this can be both cross as well as direct, beyond the scope of Mr. Morris's direct, so that we can hopefully be more efficient with our time.

All right. So, Mr. Dondero, you're still under oath. Mr. Wilson, you may go ahead. (Pause.) All right. Mr. Wilson, can you hear me?

MR. WILSON: I apologize, Judge. I forgot to unmute.

THE COURT: All right. You may proceed.

MR. WILSON: All right.

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Dondero, when did you learn that the Debtor was

seeking a TRO against you?
A On or about the time they filed it.
Q And did anyone at that time explain to you the relief the Debtor was seeking?
A Shortly thereafter, counsel went over it with me.
Q And did they -- your counsel explain the relief to you?
A Yes.
Q And did you end up attending the hearing on the TRO?
A No.
Q And why did you not attend the hearing on the TRO?
A Well, all of these hearings tend to start with a diatribe of what I think are untruthful, hurtful, and insulting comments about me that seem to go on for hours. And I -- I don't know, what's the expression, twisted by knaves to make a trap for fools, but I hate -- I hate hearing it, so I -- I've done nothing but try and help the estate and buy the estate in good faith, but people are moving to different agendas, and I think we've been betrayed by Seery morphing from a Chapter 11 to a Chapter 7 trustee for his own benefit.
Q After the hearing, did you learn that there was a TRO entered against you?
A Yes.
Q And how did you learn that a TRO had been entered against you?
A From counsel.

Q And how long after the hearing did you learn about that?
A Shortly thereafter. I'm not sure exactly when.
Q And did your counsel provide you a copy of the TRO?
A Yes.
Q And did anyone explain to you what the TRO meant?
A Yeah, I -- again, I take seriously anything that comes from the Court, and I did adjust my behavior, but the overall theme, that somehow I was doing something to hurt the creditor or hurt the Debtor or hurt investors I viewed as incongruent with any of my behavior. So I didn't think it was going to require much adjustment. I -- I -- yes. So, anyway. But I paid attention. I listened. I understood that we're still moving forward with pot plan activities. I understood we were still moving forward on trying to migrate the employees peacefully under a shared services agreement. And I understood that we were still trying to figure a settlement, either individually with different creditors or globally with different creditors.
Q Okay. Did you -- you said that your counsel provided you a copy of the TRO and you discussed the TRO with your counsel. Did you -- did you form an understanding of what you could and could not do under the TRO?
A Yeah, I -- again, like I -- like I just said, I thought the spirit was to make sure I didn't do anything that could be interpreted as moving against the Debtor, but still

nonetheless trying to preserve value and reach a settlement. And, you know, the -- the employees have been treated more shoddy than in any bankruptcy we've ever been involved in, and so I was also wanting to make sure that shared services went as smoothly as possible.

Q Did you have an opportunity to ask your counsel questions about the TRO?

A Yes.

Q And did you rely on your counsel to explain to you what the TRO meant?

A Yes.

Q And in the weeks that followed the entry of the TRO, did you continue to seek advice from your counsel regarding what you could and could not do under the TRO?

A Yes.

Q And why did you do that?

A Again, to stay compliant, not -- to stay compliant and avoid any specific tripwires or any trickery that might have been in the agreement.

Q Did you -- why do you believe that the TRO was entered against you?

A It goes back to the trades that were done for no business purpose the week of Thanksgiving, two days before Thanksgiving, I think, actually, the Friday after Thanksgiving, when only five percent of the people on Wall

Street are actually in the office, selling securities for no business purpose at a 10 percent loss to where they were trading and a 50 percent loss to where they were trading a month later.

Q Well, did you interfere with Mr. Seery's trading activities?

A I've been as clear as I can be. I take much umbrage in capricious, wanton destruction of investor value. And I interfered with the trades around Thanksgiving directly by telling the traders that they shouldn't put the trades through, there's no business purpose, there's no rationale, that the investors that control a vast majority of the CLOs are going to move the contracts and they don't want the securities traded. So, yes, I objected strenuously in the November Thanksgiving time frame.

As far as December 20th is concerned -- I know I've corrected this testimony three or four times -- there is no evidence of me talking to anybody other than sending one email to Jason Post, who is a NexPoint employee, not a Highland employee, and just saying, you know, Jason, you need to look at these trades. Because I couldn't believe they would pass through compliance when they were against the specific interests of investors.

Q Well, Mr. Dondero, did you rethink your actions around Thanksgiving, after the filing of the TRO motion by the

Debtors?

A Yeah. I mean, yes. I mean, just to repeat, again, I did nothing regarding the December 20th trades except for one email to Jason Post saying you should take a look at it. I never followed up with him. I never knew what he was doing. It wasn't until he testified a month later that he looked at it with outside counsel, agreed that the trades were improper, so he wouldn't put them through the order management system, so Seery and Highland had to come up with their own workaround to do trades that I still believe are improper.

Q Did you respect the Court's authority to enter a TRO against you?

A Yes. I mean, like I said, I didn't interfere directly or -- and I think Seery has testified twice that he had his own workarounds, he did what he wanted to do, regardless of investor thoughts or compliance, and no one stopped him or slowed him down anyway. So there's no -- there was no harm whatsoever regarding the December trades.

Q So you took the TRO seriously?

A Absolutely.

Q And the TRO was important to you?

A Well, I -- yes. I mean, I understood, I respected, you know, I modified my direct behavior, but I still had my views on what's proper for the estate and what's proper for investors, so I have to reflect those, you know, differently

or indirectly.

Q So I guess a fair characterization of what you just said is that you may have had differing opinions on the actions the Debtor was taking but you changed the way that you reacted to those actions?

MR. MORRIS: Objection to the form of the question. Leading.

THE COURT: Sustained.

BY MR. WILSON:

Q Well, Mr. Dondero, did you -- did you agree with everything Mr. Seery did after December 10, 2021? I'm sorry, 2020?

A No.

Q Did you take any action -- did you take any action after December 10, 2020 to -- that you understood might violate the TRO?

A No. And, again, with the goal of trying to transition employees fairly, make up to them the fact that their 401(k) contributions were canceled, their 2019 bonuses were canceled, their 2020 bonuses were canceled. You know, I tried to do what was best and fair for everybody, but not in a way that disrupted the Debtor or even contacted, you know, people directly.

Q And so were you aware on December 10th that you were restrained from 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?

A Yes. And that's how we handled it. We had a meeting with -- or, in fact, I wasn't even at the meeting, but Judge Lynn had a meeting with the independent board members to discuss the pot plan towards the end of the month of December.

Q And in your understanding, did you ever do anything to violate that provision of the TRO?

A No.

Q Were you aware that on December 10th you were restrained from making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents?

A Yes.

Q And did you do, in your understanding, did you do anything after December 10th to violate that provision of the TRO?

A No. I mean, that's -- I had very -- very little, if any, contact with any Highland employees or board members, or Seery, other than the day after Thanksgiving, in that period of time whatsoever. So I never -- I never threatened anybody -- I'm going to say period -- but even during the injunction period, for sure.

Q Were you aware that on December 10th you were restrained from 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?

A Yes.

Q And did you knowingly do anything to violate this provision of the TRO?

A No. I said this before, probably not in the right format, on whatever it was, cross or direct earlier, but shared services was a broad, multifaceted discussion that a lot of people were involved in and moving towards for three or four months. It included systems, it included accounting personnel, it included what was going to happen to 40-odd employees, which asset management contracts were potentially going to move or not move. At one point, the CLOs were, and then those CLOs weren't. You know, whatever.

So, there was -- it was not just about moving back office. It was also about front office and valuation and whether or not there was going to be an overall settlement, whether or not the pot plan was going to work out, whether or not there was going to be an ability to buy out individual creditors. All those things were being explored, as you saw in the emails earlier, like with Clubok. There was a -- exploring buying out his interest or changing his dynamics.

There was also conversations where Redeemer Committee had agreed to sell their interest in Cornerstone for ninety million bucks but then changed their mind.

There was agreements with -- there was negotiations going on all over the place. And I needed help, since I'd been isolated, and Scott Ellington, as my settlement counsel, or as the go-between with Seery and with the creditors, was an important piece of trying to get something done.

Q Mr. Dondero, were you aware that on December 10th you were restrained from 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 or controlled by the Debtor, and pursuit of the plan or any alternative to the plan?

A Yes. I mean, it was -- it was clear this was the final step in the divide-and-conquer strategy. It was clear that Pachulski and Seery were going to be rewarded a multiple of ten or fifteen times compensation for becoming liquidating trustees instead of Chapter 11 trustees. And the best way to do that was to isolate me by creating gigantic awards to claimants who six, nine months earlier, Seery would bet his career had zero claims, all of a sudden got a hundred million bucks.

It was a way of distorting those claims between Class 8 and Class 9 so that there would never be a residual interest, and then for Pachulski and Seery to get paid large incentive compensation for administering a liquidation, even though they

were betraying the estate that they had been hired for to do a Chapter 11.

Q Given all that, did you do anything that you believed would violate the -- that provision of the TRO?

A No. I don't believe that objecting to the 9019s that had no basis in economic reality or legal risk, that were never scrutinized, you know, by the Court, I did not believe that objecting to those in any way violated the TRO.

Q All right. Well, in any event, are you -- are you aware that the TRO included a footnote that says, For the avoidance of doubt, this order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case?

A Yes.

Q Were you aware that on December 10th you were restrained from otherwise violating Section 362(a) of the Bankruptcy Code?

A Yes.

Q And do you know what Section 362(a) of the Bankruptcy Code is?

A That's -- is that the one with disturbing contracts or taking property? It's one of those two, right?

Q Well, would it -- would it be the automatic stay, in your understanding?

A Yeah, okay, the automatic stay regarding contracts.

Q And did you violate, after December 10th, that provision of the TRO?

A No.

Q Were you aware that on December 10th you were restrained from causing, encouraging, or conspiring with any entity owned or controlled by him -- meaning you -- and/or any person or entity acting on his behalf from, directly or indirectly, engaging in any prohibited conduct?

A Again, yes. Again, it's broad and far-reaching, but it's an intent to isolate anybody who -- myself and any other third party or related party that has bona fide interests in stopping this destruction of an estate that started with $450 million of assets and $110 or $120 million of claims the first three months in. And that was Pachulski's work and everybody else's. And then somehow at the end we end up with $200 million of assets and $300 million of claims.

Where did it go? Where's the examiner? Where's the -- where's the -- where's the scrutiny of giving HarbourVest more of an award than they had in investment in the funds? Where is the scrutiny of giving Josh Terry another $28 million on top of the 18 he's already taken out of Acis on a $1 million employee dispute? Where's the scrutiny of Redeemer getting more in terms of cash, noncash, keeping of Cornerstone, than their original arbitration award? Where is the fairness in

this process?
Q Despite your personal beliefs on those matters, did you do anything that would violate that provision of the TRO?
A No.
Q And, in fact, after December 10th, did you do anything at all that you believed would violate the TRO?
A I've done nothing except, in a complex, shifting betrayal, trying to provide continuity for the business and for the employees. I've tried nothing except try to settle this. But as the -- as the Court's best judgment is to relentlessly pound on everything we do, there's no way to ever to reach a compromise because the other side figures they're going to win everything and has no downside. So I don't see how I could ever negotiate more on a settlement.
(Interruption.)
Q So, to clarify, after December 10th, did you ever do anything that you believed might violate the TRO?
A No.
Q All right. I'm going to show you an exhibit -- and I think Bryan Assink is going to put it on the screen -- that was previously admitted for the Debtor. And that would be Debtor's 55. And I want to go to Page 14 of that document.
MR. WILSON: And scroll down just a hair, Bryan. All right. That'll work.
BY MR. WILSON:

Q All right. Mr. Dondero, you were asked to read some provisions from this. And to refresh you, this is the Highland Capital Management Employee Handbook, Exhibit 55 for the Debtor. But you were asked to review and read some provisions from this exhibit in your earlier testimony, but I want to point you to one sentence that you were not asked to read, and that would be the last sentence of the paragraph in the middle of the page there that starts with "Participation in this policy." Can you read that sentence, starting with "Your obligations"?

A I'm sorry. Where is it? In the first full paragraph or the second full paragraph?

Q Yeah. The first -- the last sentence of the first full paragraph, starting with "Your obligations."

A Okay. (reading) Your obligations under this policy shall terminate upon the termination of your employment, provided that you will remain obligated to furnish historical call records covering the period through the date of your termination, as requested, through the termination of your employment.

So I had been terminated -- I had been terminated long ago, if that's what you're asking.

Q Yes. What day were you terminated?

A Well, I was terminated as a Highland employee early on in the case, and I was -- well, I guess I was paid by NexPoint,

but no, then I was terminated by Highland -- you know what, I don't remember, honestly.

Q Well, do you -- do you recall if you submitted a letter of resignation on October 9th?

A You know what, that -- that sounds familiar. Yeah, I would have -- yes. I would have preferred not to resign, but I contractually had to.

Q Well, so what were the reasons that led to you resigning?

A I was asked to resign.

Q And who asked you?

A Jim Seery.

Q During your time with Highland, did Highland pay for your personal cell phone bill?

A I -- I don't know. I -- pre-bankruptcy, I assume yes. I don't know what was going on after bankruptcy.

Q Do you know whether you or Highland paid for the cell phone itself?

A I don't know.

Q And by cell phone itself, I'm referring to the cell phone you had up until around mid-December. You don't recall who paid for that cell phone?

A No.

Q How often do you get a new --

A But that'd be a --

Q -- cell phone? I'm sorry. You --

A That'd be a good -- I was going to say, that would be a good question to research. It might not have even being been paid by Highland. I don't -- I just don't know the answer.
Q Did you --
A Yeah.
Q Did you routinely replace your cell phone?
A Usually every three or four years, although I really do not like this new 5G phone at all.
Q Well, do you know when you last got a phone prior to December of 2020?
A Three years ago.
Q And did Highland have a procedure for replacing your cell phone?
A Yes. It was -- it was put in place by Thomas Surgent as head of compliance with the goal of protecting investor information or anything that could be business communication being misused by a recycled or destroyed phone. So there was a process by which, when you got a new phone, you gave it to Jason Saffery -- I'm sorry, wrong Jason -- Jason Rothstein, and -- or one of the tech guys, and then they would order your new phone and they would wipe the old phone clean. I think -- I think in this case they had my phone for -- my old phone for the better part of a week.
Q All right. And you said it was Thomas Surgent who put that policy in place?

A Yeah. That's been a policy for at least a decade.
Q And who is Thomas Surgent?
A He heads up -- he's a very experienced, very thoughtful compliance guy. He's headed up compliance at Highland for over a decade.
Q And did Mr. Surgent hold compliance training sessions for Highland employees and executives?
A Yes.
Q And how often would those training sessions be held?
A I remember them as an annual event. And it was really -- it wasn't a page by page, line by line, through, you know, hundreds of pages of manuals. It was really what had changed in the environment, you know, usually more from a compliance standpoint than anything. But it would also include a refresh of any sort of manual stuff.
Q And so you attended these compliance training sessions?
A Yes.
Q And did these compliance training session specifically include training on Highland's cell phone replacement policy?
A That's part of the employee manual. You know, again, to not have to be aware of every single rule at Highland, when I have something that I know requires compliance issues, I don't solve the compliance issues myself, I give the proposed investment or solution to Compliance and they come back and tell me if it's okay or how to do it.

If I have a phone or technology issue, I give my phone to the technology guys and tell them that I want a new phone, and then they handle it in a compliant manner.

Q Do you recall when you first got your very first cell phone?

A In 1980 -- '89.

Q Okay. And when did you start Highland?

A 1994.

Q Okay. So you had a --

A '93.

Q So you had a cell phone prior to Highland ever existing, correct?

A Yes. That was in California. But once we moved to Dallas, I've had the same phone number, probably half a dozen different phones or more in Dallas.

Q So when did you move to Dallas?

A '93, '94.

Q Okay. And you've had the same cell phone number ever since that time?

A Yes.

Q And did you keep your cell phone number when you got a new phone in December of 2020?

A Yes.

Q Do you use that cell phone number for personal use?

A Yes.

Q Do you have --
A I only have one cell phone.
Q Okay. You only have one cell phone? Do you use that cell phone number to communicate with your friends and family?
A Yes.
Q Do you use that cell phone number to communicate with your attorneys?
A Yes.
Q And is there personal information on your cell phone?
A Yes.
Q Is there information on your cell phone related to business interests other than Highland?
A Yes. Some.
Q And are there communications from your attorneys on your cell phone?
A Yes.
Q Have any Highland employees with company-paid phones ever left Highland in the past?
A Yes.
Q And did Highland ever keep an employee's cell phone number when an employee would leave Highland?
A No. We didn't have a unique prefix like some companies do that designates that it's a company phone. So there was no reason for the company to ever keep cell phone numbers versus new random numbers.

Q All right. So let's go back to December of 2020. And you may have hit on this earlier. But why specifically did you decide to make changes to your cell phone plan in December of 2020?

A You know, and again, as I said, I didn't even know if my phones were -- my phone was being paid for or by who, but I assumed they were still being paid by Highland, and it's just the notice to all Highland employees they were going to be terminated without bonuses, without '19 or '20 bonuses, was going to be December 31st, then it was pushed off until January 31st, then February 15th, then February 28th. But part of that was that their benefits were ceasing at that point in time, too. So, as far as I knew, everybody was migrating their phone over, and I did mine in the most compliant way I knew how to, by giving it to the -- to the tech guys.

Q So, if Highland was still paying for your cell phone, and you're not a hundred percent sure of that, your testimony is that Highland was going to discontinue paying for that cell phone?

A That was -- that's what they had told all the employees as part of their termination.

Q Okay. So were you changing the financial responsibility to ensure that it was in your name?

MR. MORRIS: Objection, Your Honor. Just leading

questions.

THE COURT: Sustained.

BY MR. WILSON:

Q Did you put the financial responsibility for your cell phone in your name in December 2020?

A I -- December -- yes.

Q And when you were doing that, why did you decide to get a new cell phone at the time?

MR. MORRIS: Objection. Asked and answered.

THE COURT: Sustained.

BY MR. WILSON:

Q Mr. Dondero, did you -- did you keep the cell phone you had in December 2020 when you changed the financial responsibility on your phone?

A I got a more advanced 5G with better picture-taking capability and more -- more storage.

Q And do you recall when you made the decision to get that new cell phone?

A A couple weeks before the 10th. It take -- it take -- it took -- during COVID, it takes longer to get the phones, so it took a couple weeks to get it and then for the tech guys to swipe or clean out the old one and then for me to get the new one and for the old one that hit Tara's desk on the 10th.

Q Okay. Well, who ordered the new cell phone?

A I don't know. Sometimes -- most of the time, it's the

guys in tech who do it, and then they coordinate people's credit card to pay for it.

Q Okay. But it was not you that actually made the order?

A No. I was not involved.

Q Okay. And you say you think it was ordered about a week to ten days before your new phone was set up?

A At least. The iPhone 12 is -- is and has been backlogged.

Q After the cell phone policy that you testified to earlier was put in place, did you follow this policy every time you got a new cell phone?

A Yes.

Q Did you do anything differently with respect to the process of replacing your cell phone in December of 2020?

A No, I did not.

Q At the time you got a new phone, were you aware that Scott Ellington was also getting a new phone?

A No.

Q So did you discuss your decision to get a new phone with Mr. Ellington?

A No. Again, I assumed everybody was doing it. It wasn't something I needed to discuss with him.

Q So, --

A Yeah.

Q -- do you recall if you had any discussions with Isaac Leventon about getting a new cell phone?

A No.
Q No, you don't recall, or no, you did not?
A No, I did not.
Q At the time you got your new phone, were you aware that any party was seeking information from your old phone?
A No.
Q Did Isaac Leventon ever tell you that anyone wanted to preserve text messages on your old phone?
A No.
Q Were you ever provided a litigation hold letter or other notification to preserve information on your phone?
A No.
Q Did you ever receive -- or, I'm sorry -- did you receive a text message from Jason -- Jason Rothstein on December 10th stating that your old phone was in Tara's desk drawer?
A Yes.
Q And who is Tara?
A Tara is my assistant.
Q Did you ever see your old phone again after receiving that text?
A No.
Q And who -- do you recall who -- the individual you handed your phone to when you initiated the process to getting a new one?
A It was Jason Rothstein in the Systems or the Technology

Group.

Q And to be clear, Mr. Rothstein is a Highland employee, right?

A Yes.

Q Do you have any personal knowledge about what happened to your phone after Jason Rothstein texted you that he left it in Tara's desk?

A No.

Q Did you ever look to see if it was in Tara's desk?

A No.

Q Did you -- you -- you didn't take the phone out of Tara's desk?

A No.

Q So did you ever see the phone again after you turned it over to Jason Rothstein?

A No.

Q Do you know where the phone is today?

A No. But, again, I don't know why this is relevant. They can get the text messages from the phone company if they think it's that big of a deal.

Q When you previously testified that the phone was disposed of, what did you mean?

A I mean, that's -- that's the last step. That's what always happens to the old phones. But to say it was tossed in the garbage, I have no idea. I have no idea what happened to

it after it went back to Tara's desk.
Q So do you have any personal knowledge that your phone was actually disposed of?
A I don't know.
Q When did you first become aware that the Debtor wanted to see your phone?
A Again, when I had given it to Jason, I thought they had seen it. You know, so I was surprised by the communication during the week of Christmas, I think it was, when I was -- I was out of town.
Q Well, yeah, I'll rephrase my question. When did you first become aware that the Debtor's counsel wanted to see your phone?
A I had some communication from my counsel the week of Christmas.
Q Okay. And what did you do for Christmas last year?
A I took my girls to Aspen.
Q And do you recall the dates that you were in Aspen?
A Until the 28th.
Q I'm sorry. I think you cut out.
A Until the -- until the 28th.
Q Okay. And were you working while you were in Aspen?
A A little bit.
Q So, there was some talk earlier about the Committee filing a motion to get ESI from Highland and certain individuals.

Did anyone, after or contemporaneously with the filing of that motion, ever inform you that the Committee was seeking your text messages?

A No. And -- yeah. No. And it's -- that's an indirect request versus a direct request, right?

Q Well, so no one at the Debtor ever asked you to preserve text messages?

A Correct.

Q And so would that include Isaac Leventon? He never asked you to preserve any text messages?

A Correct. No one -- no one -- no one from the Debtor did.

Q And, so, going back, you were in Aspen when the Debtor's December 23rd letter was sent to Mr. Lynn, correct?

A Yes.

Q And Mr. Lynn communicated that letter to you?

A Yes.

Q And did you discuss that letter with Mr. Lynn?

A Yes.

Q And are you aware that Mr. Lynn wrote a response to Jeff Pomerantz regarding that letter?

A Yes.

Q And are you aware that that response was sent on or about December 29th?

THE WITNESS: You want to -- can John Morris maybe put his phone on mute, because he's -- he's shuffling papers

and it's -- it's throwing it off on this end.

THE COURT: I --

MR. WILSON: Yeah. My question was, are you aware that that letter was sent on or about December 29th?

THE WITNESS: Yes.

BY MR. WILSON:

Q And are you aware that that letter from Mr. Lynn to Mr. Pomerantz stated that, we are, at present, not sure of the location of the cell phone issued to Mr. Dondero by the Debtor?

A Yes.

Q On December 29, 2020, did you know the location of your cell phone?

A No.

MR. WILSON: Your Honor, at this time I would like to ask for the admission of the exhibits on my second amended witness and exhibit list.

THE COURT: All right. Are you talking about Exhibits 1 through 20 at Docket Entry 106?

MR. WILSON: That's correct. Exhibits 1 through 20.

THE COURT: Any objection?

MR. MORRIS: No, Your Honor.

THE COURT: All right. They're admitted.

MR. WILSON: All right. All right, thank you.

(Dondero's Exhibits 1 through 20 are received into

evidence.)

MR. WILSON: Can you turn to 1?

BY MR. WILSON:

Q We're going to put an exhibit -- Dondero Exhibit No. 1 on the screen. Mr. Dondero, have you seen this document before?

A Yes.

Q And can you identify what this document is?

A It's a shared services agreement -- (pause). It's a shared services agreement between Highland and NexPoint Advisors.

Q Okay. And in the first paragraph, is NexPoint Advisors defined as the Management Company?

A Yes.

MR. WILSON: Go to Page 3, the bottom. Article 2.

BY MR. WILSON:

Q Now, I want to direct your attention to the bottom of Page 3, Article 2. Can you read the first paragraph, Section 2.01?

A (reading) Highland is hereby appointed as staff and services provider for the purpose of providing such services and assistance as the management company may request from time to time to -- and as applicable to make available the shared employees to the management company, in accordance with and subject to the provisions of this agreement, and the staff and services provided -- and the staff and services provider hereby accepts such appointment. The staff and services

provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Q All right. And can you read for me the first part of Paragraph 2.02, please?

A (reading) Without limiting the generality of 2.01, and subject to Section 2.04, applicable asset criterion concentrations below, the staff and services provider hereby agrees from the date hereof to provide the following back and middle office services, administrative infrastructure, and other services to the management company.

Q All right. In Paragraph A, under Back and Middle Office, if we go down to the next page, does that include Finance and Accounting Services?

A Yes.

Q And then Paragraph B, does that include Legal, Compliance, and Risk Analysis services?

A Yes.

Q And specifically, would that be assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis?

A Yes.

Q So, did NexPoint Bank have its own accountants?

A No. NexPoint -- NexPoint Advisors, that's who we're talking about here, --

Q I'm sorry. NexPoint Advisors.

A -- yeah, relied on Highland for those services. I mean, it subsequently -- it subsequently had to hire a couple lawyers because it wasn't getting those services to the extent it used to. But it used to have zero, zero of its own accountants and lawyers.

Q Okay. And then you had -- you said it had zero lawyers initially. Was it the intention that, that by shared services, that NexPoint Advisors would use Highland's lawyers and accountants without the need of having to hire their own?

A Yes. I mean, the structure might be unusual compared to other companies that run through bankruptcy, but in financial services, there's -- there's generally a centralized model for high-cost people in the legal, accounting, and tax arena so that each subsidiary doesn't have to have their own expensive, duplicative set of employees.

Q Okay.

MR. WILSON: Can you go to the next exhibit? 2?

BY MR. WILSON:

Q I'm going to put up Dondero Exhibit 2. (Pause.) It should be here momentarily. All right. Can you see that document, Mr. Dondero?

A Yes.

Q And have you seen this document before?
A This is a similar shared services agreement, but this time with HCMFA, the other asset management arm.
Q Okay. And you would agree with me that Highland Capital Management, LP is defined as HCMLP and that Highland Capital Management Fund Advisors, LP is identified as HCMFA? Do you agree with that?
A Yes.
Q Okay.
MR. WILSON: Go to Page 3.
BY MR. WILSON:
Q Now, can you read Paragraph 2.01 to me?
A It's almost the exact same as the other one. Do you really want me to read it? I mean, it just -- is there something different in this paragraph? It's just a different entity.
Q Right. Well, just -- just read the Paragraph 2.01.
A Okay. (reading) During -- during the term, service provider -- service provider will provide recipient with shared services, including, without limitation, all of the finance and accounting services, human resources services, marketing services, legal services, corporate services, information technology services, and operations services, each as requested by HCMFA and as described more fully on Annex A attached hereto, the shared services exhibit, it being

understood that personnel providing shared services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Q All right. And you stated a minute ago that, although worded differently, this paragraph has the same structure and intent of the prior document we looked at, correct?

A Yes.

Q And there's a -- a sentence and a portion of a sentence that you read that says that the personnel providing shared services may be deemed to be employees of HCMFA. Do you see that?

A Yes.

Q And do you know why that provision is in there?

A Sometimes the Investment Advisers Act requires specifically employees to be named that are key man in different -- whatever. So sometimes people have to be dual employees or -- or in the entity. Even if there are very few people in the entity and it's relying on shared services, sometimes, yeah, sometimes you need to have split people or move them in.

Q All right. I just want to ask you a couple questions about your depositions given in this case. Did you give a deposition on December 14th?

A Yes.

Q And who took that deposition?

A I believe that -- I believe that was John Morris.
Q Okay. And was that deposition given remotely by Zoom?
A Yes.
Q And December 14th is four days after the TRO was entered, correct?
A Yes.
Q And at that deposition, did Mr. Morris ask you where you were located?
A Yes.
Q And what did you tell him?
A In the Madrone conference room. Or the main conference room at Highland.
Q Okay. Now, you acknowledged that you personally intervened to stop trades that Mr. Seery wanted to make around the time of Thanksgiving, correct?
A Yes.
Q Were any trades halted as a result of your actions?
A I -- I don't believe, even when I directly impacted it in November, I don't believe it actually stopped or slowed anything down. And I believe he testified similarly. And I know for sure in December, because I had no contact with any of the traders, I know I did nothing to disrupt anything in December 20th --
Q But in any event, it's your understanding, as you earlier testified, that those events around Thanksgiving led to the

entry of the TRO?

A Yeah. I mean, again, I think he intentionally did it to get my attention. He sold illiquid restructured equities that the CLOs had owned for ten years, had no reason to sell, would have liked to have held longer, and he sold them for almost -- for about half the price that they were two months later. It was -- it was a colossal, intentional harm of investors.

Q But you believe that those events led to the entry of the TRO?

A Yes. I reacted severely and -- by telling him not to do it again. And then that got perceived as a threat and got perceived as somehow usurping his power to harm the beneficial holders of those CLO assets, which are the retail funds, the DAF, HarbourVest at the time, et cetera.

Q Since that TRO was entered, have you taken any actions to try to stop Mr. Seery's trading?

A No.

Q Have you interfered with the Debtor's trading in any way since the TRO was entered on December 10th?

A No.

Q Have you agreed with every trade that the Debtor has made since December 10th?

A No.

Q Now, you -- there's -- there's been testimony in this case that Mr. Seery wanted to make more trades in December of 2020.

Do you recall that testimony?

A More trades between Thanksgiving and New Year's like the other ones? I mean, I -- I don't know how crazy we could get here, but I -- I don't remember that testimony.

Q Okay. Well, did you become aware that Mr. Seery was making trades in December of 2020?

A I believe in the same names, you know, the same AVYA at $17, $18, $20 a share, $21, before it hit $35, $37, you know, after he sold it. You know, that kind of stuff.

Q But you did become aware that Mr. Seery was attempting to make trades in December, correct?

A Yes.

Q And did you attempt to stop any of those trades?

A No.

Q Did you call Mr. Seery about those trades?

A Nope. I didn't call the traders. I just -- again, I thought it was another compliance breach, I thought it was another violation of the Registered Investers Act, and so I just highlighted it to Jason Post, the NexPoint compliance guy, said, take a look at it.

Q Did you send Mr. Seery any texts or emails about the trades?

A Nope.

Q Did you threaten Mr. Seery in any way about the trades?

A No.

Q Do you recall how you became aware that Mr. Seery wanted to make trades in December of 2020?
A He was -- he was either still using Highland Fund traders or he was using NexPoint or the OMS system. Somehow, he was using either traders or an OMS system that wasn't his and was ours. It -- the -- either the OMS system or the general blotter or something, where other employees made me aware of it.
Q And so did you -- did you receive that notification through an email?
A I don't believe -- yeah, no, I think I did, because that's what I forwarded to Jason Post, I believe.
Q Okay. And who is Mr. Post?
A Jason Post is the compliance officer at NexPoint.
Q Okay. And he's not a Highland employee, correct?
A No.
Q Did you have any follow-up communications with Mr. Post after you forwarded him that email?
A No, I did not.
Q Did you ever give Mr. Post any direction or any instruction to take any action with respect to those December trades?
A No. And like I said, the first time I found out he did anything, which he just found them to be noncompliant and I think he would have let them go through our order management

system, I didn't find that out until a month, month and a half later.

Q And how did you find that out?

A When I was in Davor's offices and he testified.

Q Was that hearing in January of this year?

A Yes.

Q And so did -- did Mr. Post, to your understanding, end up interfering with the booking of trades?

A I -- I think what ended up happening was, instead of using the order management system, I think Seery just started going directly through Jefferies without any compliance oversight. That's how I understood.

(Interruption.)

THE COURT: All right. Someone needs to put their phone on mute.

Go ahead.

BY MR. WILSON:

Q Okay. Can you tell me what you mean by booking of trades?

A If you don't have access to the order management system, then you have to book them directly with the dealer.

Q Well, so when the trade is booked, has it already been executed?

A Yeah, generally.

Q Okay. And you talked about the OMS or the order management system. What is that?

A Well, it's like an automated version of the old trade blotter that used to be a gigantic book that everything had to be written in in pen back in the old days. That's essentially the source document for all trades that an organization performs.

Q Okay. So what's the benefit of using the OMS system?

A It's a necessary part of compliance with the SEC. You have to show that you have a discrete and protected primary source for all your trades, all your trade information.

Q And so, if I understand you, you said that these trades that Mr. Seery executed in December weren't run through the OMS?

A I understand that when Jason Post, I think, made the determination with outside counsel that they weren't properly -- that they weren't proper trades for some reason, and then he didn't allow them to go through the order management system, so I think Seery's testimony was he wasn't impaired at all, he just did the trades himself through Jefferies. But it -- yeah, that's all from -- that's all from memory.

Q Well, had the Advisors booked trades for Highland in the past?

A Yes.

Q And were the trades that the Advisors booked for Highland run through the OMS?

A Yes.

Q Were the Advisors contractually obligated to book trades for Highland?
A I don't know. But first and foremost, they have to be compliant, you know.
Q Did you have any role in instructing the employees of the Advisors not to book Mr. Seery's trades in December of 2020?
A I had no involvement whatsoever.
Q Now, are you familiar with letters that were sent in December of 2020 from the K&L Gates law firm to the Pachulski law firm?
A Yes.
Q Do you know how those letters came about?
A I believe the CLO equity investors -- and remind you, those are old CLOs where there's almost no debt on them at all; they're just pools of assets -- that the CLOs -- that the CLO investors had owned for years and wanted to keep the exposure, they were witnessing Seery selling things from their portfolio for no business purpose. And as the beneficial holders of, I think, in aggregate, between the retail funds and the DAF, they owned more than a majority of 13 of the 18 yields and a supermajority of seven of them, and they had every intention of replacing Highland as manager once the bankruptcy ended because Highland had no staff, it was going to have no staff post the bankruptcy and would not qualify under key man provisions and would not have the expertise

necessary to manage their CLO.

We had seen what happened in Acis when a manager has no employees and no skill to manage a CLO. You end up with the Fort Worth performing CLOs in the universe and the destruction of value. And so I think that NexPoint and DAF investors were -- were worried --

(Interruption.)

THE WITNESS: -- about what would happen if they didn't get control of the CLOs.

THE COURT: Someone needs to put their device on mute. I'm not sure who it is. Caller 77. Anyway, it went away. Continue.

MR. WILSON: Okay. Can you pull up Debtor's 14?

BY MR. WILSON:

Q All right. I'm going to pull up the Debtor's Exhibit No. 14.

MR. WILSON: And go to Page 5. Yeah, that's right.

BY MR. WILSON:

Q All right. Do you recognize this document as being one of the letters sent from K&L Gates to the Pachulski firm?

A Yes.

Q Did you instruct anyone at K&L Gates to send this letter?

A No.

MR. WILSON: Let's go to 15, hopefully. And then go to Page 6.

BY MR. WILSON:

Q And I'm now going to show you 15, Exhibit -- Debtor's Exhibit 15. And this is Page 6. This is another letter from K&L Gates, it looks like sent the following day from the last letter we looked at. And so I'm going to ask a few questions referring to both of these letters. But did you instruct K&L Gates to send either one of these letters?

A No. If I -- if I had had involvement in these, I would have written them much stronger than these letters are written. You know, these letters are written with a little bit of needing approval from the independent board, a little bit of fear of the, you know, bankruptcy process, not understanding what's going on or why Seery is doing what he's doing, you know, understanding the detriment of the portfolios from -- from me or the manager, et cetera.

So it's -- both these letters are fairly diluted in what they say they'll do. You know, it's -- they both say subject to bankruptcy court approval or subject to this, we may do that or this, or we're concerned about this. But I think the behavior was egregious and self-serving. I would have had much stronger letters if I had anything to do with them.

Q So you're saying that these letters don't contain your words?

A They do not.

Q Did you participate in the drafting of these letters in

any way?
A I did not. Like I said, I would have done something much stronger and I was disappointed on how watered down they were.
Q Did you instruct anyone as to the general substance that these letters should convey?
A No, I -- it's -- I applauded it and I encourage people to do their jobs, which is to watch out for the investors and watch out for capricious behavior on the part of Jim Seery. But -- yeah, but no, I did not -- I did not draft it or have direct input into it.
Q Did you read or approve the letters before they went out?
A No.
Q Did you have any part in putting together these letters?
A No. I mean, like I said, I was -- I was disappointed in the soft -- I would have had more umbrage. I was disappointed in the softness of the letters.
Q But were -- you were provided a copy of these letters after they were sent?
A Yes.
Q So was the sending of the letters in general your idea?
A In general, I thought it was a good idea. I mean, in general, like I said, I viewed it as a violation of the Advisers Act and the spirit of the Advisers Act, when the beneficial holders have told you they're going to change managers and don't want their account liquidated. And I still

to this day believe -- believe that. And if it was -- if it was money I inherited from my grandmother, I would be extremely annoyed if a financial advisor or something did this to the portfolio.

Q And I appreciate your answer, but that wasn't exactly what I asked you. Was the sending of the letters your idea?

A No. The sending -- I believe Jason used outside counsel to, you know, validate the impropriety, and then he championed the letter dealing with independent boards and third parties and, you know, whatever, and this is -- these are the letters that came out.

Q So did he cause the sending of these letters?

A I wouldn't use the word cause. I mean, like, again, I was supportive. I encouraged them. I think they were the right thing to do. I would -- I would do them again. Would encourage someone to do them again. I still think this issue isn't resolved. I still think it's -- it's craziness that Highland is managing these CLOs.

Q Since December 10th, have you ever communicated with any Highland employee to coordinate your litigation strategy?

A No.

Q And you're familiar with Scott Ellington?

A Yes.

Q And he was a Highland employee?

A Yes.

Q And what was your understanding of his role at Highland after December 10th?

A Again, I was being -- I was being, you know, increasingly without support and isolated. I didn't even -- you know, I was trying to put pot plants together without even knowledge of the assets, you know, and I was -- I was increasingly in a vacuum. But Scott Ellington was helping, as settlement counsel, trying to reach some kind of agreement to exit Highland, transition the employees, et cetera.

It was important for him to know everything that was going on, in my opinion. Because whether it included the letters we just went over that reduced the value of the assets at the Debtor such that, you know, you know, we could pay less, whether it was legal matters or legal risks, you know, I thought it was important for him to be -- important for him to be aware and important for him to be fully informed so that he could be nimble in his role as settlement counsel and in his role on shared services. Because, again, we were trying to -- we were trying to transition 40 or 50 employees that were being treated extremely harshly by the Debtor. And we were trying to provide fair and proper continuity for them also.

Q When you refer to settlement counsel, are you referring to what others may have referred to as a go-between between you and Mr. Seery?

A Go-between was part of it, but he had -- Ellington had

been anointed in the late spring/early summer as a go-between to work different parties and angles during the mediation and after the mediation and around the pot plan, et cetera. And he was integrally involved in all of those.

And then as far as the shared services and transitioning employees, he was deeply involved in that, and I think he actually spoke as almost a union rep for the employees. So there was -- he was intimately involved in that.

And then how the shared services were going to work going forward, once everybody was terminated from Highland, you know, to treat people as fairly and smoothly as possible.

Q Was Mr. Ellington --

A I'm sorry. Let me just say the last thing. I don't think, other than the Thanksgiving time frame, I don't think I talked to Seery in the last seven or eight months. So he was an important go-between and an acknowledged go-between and used as a go-between by Seery as much as by me. So whether his role was official, he was def... the form -- or, the substance over form is that he was being used in that role, literally having meetings on shared services a day or two before he was terminated for cause.

Q And was Mr. Ellington general counsel at Highland?

A Yes, he was.

Q And as part of Highland's legal department, did he provide shared services to the Advisors?

A Yes.
Q And would those Advisors be Highland Capital Management Fund Advisors and NexPoint Fund Advisors?
A Yes.
Q And those are both entities that -- that you -- that are part of your umbrella?
A Yes.
Q After the independent board was established, you testified that Mr. Ellington started serving as a go-between between you and the board, correct?
A Yeah, I'd say the official go-between role, because I was actively talking to board members and I was actively talking to Seery, and every time Seery sold something in a non-arm's-length transaction or below market or without court approval, I went and I complained to the other independent board members.

So I was having active conversation around the life settlement transactions with the independent board, around the SSP transaction, et cetera. But by the summertime, like I said, Ellington was the primary contact person for me and I -- to deal with Seery, and I think the primary contact person for Seery to deal with me.
Q And did Mr. Ellington -- I'm sorry. Did you use, actually use Mr. Ellington to communicate ideas to the boards or Mr. Seery concerning your pot plan proposals?

A Yes. We did a couple pot plans of our own when we couldn't get the independent board to focus. And once Seery shifted to whispering to creditors about a liquidation plan, we couldn't get Seery to buy into a pot plan at all, so Ellington and I went forward with a couple of pot plans on our own, and then -- but the last pot plan was solely with Judge Lynn and the independent board members, without me and without Ellington.

Q Well, did Mr. Seery use Mr. Ellington to communicate ideas back to you?

A Yes.

Q Did Mr. Seery use Mr. Ellington to communicate ideas to you after December 10th?

A Yes. Like I said, up until literally a day or two before he was terminated, there were authorized shared services meetings, because there was a couple-week period there where no one was allowed to have a shared services meeting unless approved by Seery in advance, and nothing was getting done. So he -- Seery anointed a couple people at Highland to be able to deal with a few people at NexPoint and to have a couple meetings, and Ellington was one of those people who actually led the meetings in the last week of December.

Q Did you ever discuss entering a common interest agreement with Mr. Ellington?

A I believe -- I believe the lawyers had a couple different

conference calls on it, and then I think the lawyers for the employees and for the senior employees determined that their strategies and tactics would be best served by not being a part of it. But I think in the beginning there was thought that it would be good for them to be in the group. But that wasn't a conversation I had with Ellington. Those were decisions the lawyers made amongst themselves.

Q Did you ever have any discussions about a common interest agreement with Mr. Leventon?

A No.

Q Did you ever discuss entering a common interest agreement with any current or former Highland employee?

A No. No.

Q Did you have discussions regarding a common interest agreement with Douglas Draper?

A Yes.

Q And who, again, is Douglas Draper?

A He represents Dugaboy and the Get Good Trust. And, you know, more importantly, there needed to be some coordination among the lawyers, and then I think it was clear to him that positioning for the Fifth Circuit was going to be important, so he -- he coordinated -- or, he led the coordination of the law firms.

Q Did you ever participate in any conference calls regarding a common interest agreement?

A I'm going to say maybe one, but it quickly -- I'm not a lawyer by training, so it was quickly not something that I added value in, and I wasn't the one that made the decisions or influenced anybody to be in or out of the agreement. So, again, maybe once, but -- but --

Q Well, was -- was Mr. Leventon or Mr. Ellington on any conference calls you might have been on regarding a common interest agreement?

A Not that I'm aware of. I have not talked a single word to Mr. Ellington or Isaac since they were terminated, which was, I believe, the last week of December. Because I have not spoken a single word to either one of them since then.

But, again, as recently as a day or two before they were terminated, they were actively involved in shared services meetings.

Q So you're not aware that they were on any conference calls that you were on regarding a common interest agreement?

A Correct.

Q And other than you, are you aware that there were any other current or former Highland employees on a conference call about a common interest agreement?

A I believe it was all employees. I mean, it was all lawyers for the different entities.

Q Would -- would -- were you aware if counsel for Mr. Ellington or Mr. Leventon were on any of these conference

calls?
A That, I believe, is true. Yeah, I believe his -- their counsels were.
Q So, you're familiar with the Dugaboy and the Get Good Trusts?
A Yes.
Q And are you the trustee for either one of those trusts?
A No.
Q Do you control either one of those trusts?
A No. Not directly. I'm a lifetime beneficiary of the Dugaboy Trust, but I don't control it.
Q When did you become aware that the U.C.C. was seeking production of documents from Dugaboy and the Get Good Trust?
A Around when -- a day or two before that Melissa email requesting a subpoena, for whoever -- but it -- I think it was a midlevel person at DSI was asking or demanding Dugaboy financials, and that was her response to that person.
Q So would that have been approximately December 2020 when you learned of that?
A Right. And, again, that was -- that response was the exact specific wording I was given by counsel to tell them at that moment.
Q Were you served with any formal requests for the Dugaboy or Get Good Trust documents?
A No.

Q And you stated that the Dugaboy and Get Good Trusts have hired counsel to represent them?
A Yes.
Q And that counsel is Douglas Draper?
A Yes.
Q And to your knowledge, has Mr. Draper been working with the Debtor's counsel to produce the Dugaboy and Get Good documents?
A Yes. I think he investigated the requests. I think he got a more formal official request, and then I think he analyzed it and said, as long as he got to review what was provided, he was okay with it. That's -- that's what I understand.
Q Well, have you or Mr. Draper ever taken the position that the documents would not be turned over?
A No. I mean, I've -- I've delegated it to Douglas to handle.
Q Have those documents, at this point, actually been produced?
A I have no idea.
Q Do you have any objection to the documents being produced?
A No.
Q And you testified that Melissa Schrath is an accountant?
A Yes.
Q And so she was a Highland employee that was contracted to

the Advisors under the shared services agreement?
A Yeah. That's -- that's the way I would describe it, because she was -- you know, I was a NexBank and -- a NexPoint employee. I was being paid by NexPoint. And she was a hundred percent -- well, 80 percent servicing me, 20 percent servicing Mark Okada. And so she was properly, as was my administrative assistant, properly lumped as part of the NexPoint shared services.
Q Okay. And in December of 2020, did Melissa have access to the Dugaboy documents?
A Yes.
Q Did you say "I guess" or "Yes"?
A Oh, yes, she did. And as a matter of fact, she said 70-80 percent of them were on the server and non-password protected.
Q So, why did you send a text message to Melissa in December?
A I didn't know they were non-password protected at that time. But, again, that was a specific advice of counsel, that it was -- it was a personal entity, not involved in the bankruptcy, and for a midlevel DSI person to ask my accountant was not -- I believe that wasn't perceived as adequate proper channels. So that was -- that was the legal advice I got from your firm. So, --
Q All right. When was your access to the Highland computer system shut down?

A I believe at night right around the 30th.
Q All right. So I just want to -- I just want to ask you a couple more questions. Did you, after the entry of the TRO, did you make an effort to modify your behavior in such a way that you would comply with the TRO?
A Yes. And, you know, something I want to make clear that I discovered during the break when I went through my phone, the January 5th deposition that has somehow become important, even though there were no Highland employees in the office other than the receptionist, is memorialized by a calendar invite on my phone -- which will also be in the Highland system -- where it was an invite a week earlier from Sarah Goldsmith, who was one of the Highland employees supporting the legal team that was largely supporting Jim Seery, sent me a calendar invite to the conference room at Highland for the deposition on the 5th. It's right front and center in my calendar. It'll be on the Highland Outlook program. And Sarah Smith -- I mean, Sarah Goldsmith works directly for Jim Seery.

So, just to maybe put that issue to bed, I would highlight that for everybody.

Q So, the answer to my last question was you made a concerted effort to modify your behavior in response to the TRO?
A Yes. The only two times I've been in Crescent was for those two depos. I don't even go to -- when people have happy

hour at Moxie's, because it's in the lobby of the other -- one of the adjacent buildings, I don't even attend happy hours at the bar in the lobby for fear of somehow violating the building order.

Q All right. So, have you thought better of your actions that you took around Thanksgiving of last year?

A I mean, you know, in due respect for the Court and the Court may be thinking that the investor allegations are fanciful or frivolous, it granted nonetheless an injunction, and I respect it. And I -- so I've been -- I handle things differently as far as what I think are material breaches on the 20th and I've -- I've adjusted my behavior. But I do not regret or think differently about the -- liquidating the portfolio the week of Thanksgiving, liquidating illiquid assets for no business purpose. I still think that was highly irregular and highly wrong.

Q So, to sum up, your opinions of the way Highland is currently being managed are not -- sorry, start over. Although your opinions of the way Highland is being managed have not changed, has your outlook on what your behavior ought to be changed?

A Yeah, my outlook really is the same, that material assets are being sold without court approval, material assets are being bought without court approval, material assets are being sold in a non-arm's-length noncompetitive way for less than

full value. I still believe that it's impacted the estate materially. I know somehow my limited involvement in portfolio management responsibility on very limited funds only through March or April, and then the performance of Highland is somehow laid at my feet, but the destruction of value has been entirely based on major asset sales by Jim Seery. Number one.

And then I would say, number two, how analysis of liabilities against Highland go from an estimate of a total of $100 to $120 million in the first quarter and end up ending up at almost $300 million, with nothing ever being litigated or challenged, just business judgment rule, that somehow it would be cheaper than litigating some of these frivolous litigation claims, has destroyed the liability side of the balance sheet.

But, anyway, but I -- you know, life goes on and I'm doing the best I can to move the rest of the business forward, move the employees forward, and we will do the best we can to get justice for the Highland estate at some point.

Q And just to clarify your testimony earlier, the last time that you saw your old cell phone in December of 2020 was when you handed it to a Highland employee, correct?

A Yes.

Q And do you have any personal knowledge whether that cell phone was actually wiped, according to company policy?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: I was told that it was.

BY MR. WILSON:

Q Okay. But you don't have personal knowledge as to whether the phone was indeed wiped by Highland, in accordance with its policies?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: I was told by --

THE COURT: Sustained.

THE WITNESS: -- Jason Rothstein --

THE COURT: Sustained.

THE WITNESS: -- that it was wiped.

THE COURT: Sustained. Rephrase the question.

MR. WILSON: I'm just trying to get him to let us know if he has any personal knowledge that the phone was ever actually wiped in accordance with Highland's policies.

THE COURT: Okay.

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Jason Rothstein told me that it had been wiped according to Highland policies.

MR. MORRIS: Objection to the form of the -- I move to strike. It's hearsay.

THE COURT: Sustained.

MR. WILSON: Your Honor, that -- Your Honor, that

would be a statement by a party opponent.

THE COURT: Who --

MR. WILSON: And it's --

THE COURT: Who's the party opponent here?

MR. WILSON: And it's just going to show Mr. Dondero's state of knowledge.

THE COURT: All right. Well, the party opponent, how do you justify that exception?

MR. MORRIS: I --

MR. WILSON: Well, Mr. Rothstein is an employee of Highland, as we've talked about, and -- and then the second point of my response will be that it's not to go to the truth of the matter asserted, just that that's the extent of Mr. Dondero's state of mind, is what he was told by Mr. Rothstein, not whether it was actually true or not.

THE COURT: All right. I'll overrule the objection.

MR. WILSON: All right. Thank you. We'll pass the witness.

THE COURT: All right. That was an hour thirty-three minutes. Mr. Dondero, do you need a five-minute break?

THE WITNESS: Sure.

THE COURT: Okay. We'll take a five-minute break, please.

THE CLERK: All rise.

(A recess ensued from 3:15 p.m. to 3:25 p.m.)

THE COURT: All right. Please be seated. All right. Just --

MS. SMITH: Your Honor, Frances Smith --

THE COURT: Go ahead.

MS. SMITH: -- for Scott Ellington and Isaac Leventon.

Your Honor, I have more good news. After the break, we reached an agreement with Mr. Wilson that they would not be calling Mr. Ellington.

THE COURT: All right. Mr. Wilson, you confirm?

MR. WILSON: I do, Your Honor.

THE COURT: All right. Well, they're excused, then.

MS. SMITH: With that, Your Honor, may he be excused?

THE COURT: Yes, ma'am.

MS. SMITH: Thank you.

THE COURT: All right. Thank you.

All right. Mr. Morris, do you have further examination of Mr. Dondero?

MR. MORRIS: I do. I hope, I hope it's not too lengthy, particularly if I'm allowed to ask my leading questions on cross-examination.

THE COURT: All right. And let me --

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Dondero, can you hear me, sir?

THE COURT: Let me just let you all know where you are timing-wise.

MR. MORRIS: Yeah.

THE COURT: You used two hours and sixteen minutes this morning on examination. But as I told you, I think you're entitled to some credit, so to speak, on your three-and-a-half hour total because of the narrative answers. So I'm not -- I'm not sure yet where I'm going to chop time, but please be mindful that's where we are. Okay?

MR. MORRIS: I'll try to limit this to 15 or 20 minutes, Your Honor.

THE COURT: All right.

BY MR. MORRIS:

Q Mr. Dondero, can you hear me, sir?

A Yes.

Q You testified that you're seeking justice for the estate. Is that right?

A Yes.

Q Your claims against the Debtor consist solely of indemnification claims and tax claims; is that right?

A Well, I mean, with proper 9019s, I think there's a residual equity value to Highland, and Highland should be able to resurrect and go forward.

MR. MORRIS: Your Honor, I move to strike.

THE COURT: Sustained.

BY MR. MORRIS:

Q Sir, the only claims that you have filed against the Debtor are for indemnification and for taxes, right?

A Yes.

Q Okay. And you made a lot of -- a lot of allegations about Mr. Seery, my firm, and the Debtor, and your views on what we're doing in this bankruptcy case. Isn't that right?

A I think it's transparent now, yes.

Q And you -- one of the complaints you have were the settlements that the Debtor entered into with certain of the creditors, right?

A Yes.

Q And you said that they weren't -- there was no scrutiny. Isn't that the word you used?

A Yes.

Q But you had every single opportunity in the world to take discovery with respect to every single one of these settlements; isn't that right?

A We did and we tried.

Q Okay. And you failed; isn't that right?

A Yeah, I -- yes. I guess that's --

Q Right? And you could have -- you, with all of your knowledge, with all of your wisdom, you could have tried to persuade the Court that these settlements were wrong. Correct?

A Yes.
Q And you did not personally ever take the stand to try to explain to the judge why these settlements were wrong. Isn't that right?
A Willing to.
Q But those hearings are over long ago. Isn't that right?
A Yes.
Q So you sit here and you complain about them, but when you had the opportunity, you chose not to testify in order to educate the judge and try to -- and try to show the judge that those were bad settlements. Isn't that right? You didn't do that?
A Counsel chose their strategy, which evidently, based on our success in overturning them, maybe it wasn't the right strategy, but their strategy was for me not to be the expert.
Q And the U.C.C. represents the interests of general unsecured creditors; isn't that correct?
A Yes.
Q And to the best of your knowledge, the U.C.C. did not object to any of the settlements that you complain about, correct?
A Everybody got three or four times more than they deserved, except for Redeemer, that got about 20 percent more.
MR. MORRIS: I move to strike, Your Honor.
THE COURT: Sustained.

BY MR. MORRIS:

Q Sir, the U.C.C. did not object to any of the settlements that you complain about, correct?

A I don't -- I don't know the answer to that. I thought more than one person objected to Josh Terry and Acis and I -- we haven't seen the 9019 for UBS or Pat Daugherty yet.

MR. MORRIS: I move to strike and I'll try one more time, Your Honor.

THE COURT: Sustained.

BY MR. MORRIS:

Q Mr. Dondero, it's a very simple question. The settlements that you complained about -- Acis, HarbourVest -- the U.C.C. didn't object to them at all. Correct?

A Yeah, I guess not. I don't know if they did or -- yes. I don't know.

Q Okay. And Mr. Seery, we -- the Debtor made a motion last summer to have Mr. Seery appointed as the CEO. Do you remember that?

A Yes.

Q And you didn't object to that, correct?

A We didn't realize he had betrayed the estate at that point. We thought he was still trying to negotiate a settlement, not give the company away.

MR. MORRIS: I move to strike.

THE WITNESS: So we did not --

THE COURT: Sus...

THE WITNESS: We did not object.

THE COURT: Okay.

BY MR. MORRIS:

Q And the Debtor didn't -- I mean, the U.C.C. --

THE COURT: Wait. It's happening again, --

MR. MORRIS: -- didn't object, correct?

THE COURT: -- Mr. Dondero. Okay? Please. Yes or no where you get a yes-or-no question.

Go ahead, Mr. Morris.

BY MR. MORRIS:

Q And to the best of your recollection, the U.C.C. was supportive of the appointment of Mr. Seery as CEO, correct?

A Yes.

Q And the Debtors just had a plan of reorganization confirmed, correct?

A Yes.

Q And as part of that plan, Mr. Seery is going to continue on as the post-confirmation executive, correct?

A I believe so.

Q And the U.C.C. is supportive of that, to the best of your understanding, correct?

A Yes.

Q Yeah. Let's talk about the phone for bit. You testified at length about this policy pursuant to which phones can just

be discarded and wiped down. Do you remember that?
A Yes.
Q You took some time to prepare for your testimony today. Isn't that right?
A No, not really.
Q You did meet with your counsel and communicate with your counsel over what grounds would be covered, right?
A Half an hour last night.
Q Okay. And despite all of the testimony that you provided about the policy of discarding phones and changing phone numbers and the rest of it, your counsel didn't show you anything in that 50-page employment handbook to corroborate what you were saying, correct?
A I don't know what you're asking. I'm sorry.
Q There's nothing in the employee handbook that reflects any of the policies you described with respect to cell phones, correct?
A That wasn't my testimony. I don't -- I don't know.
Q Okay. And your lawyer didn't show you anything, to the best of your recollection, that would corroborate what you said about this cell phone policy, correct?
A My testimony was I gave my phone to the Debtor's employee, the technology folks, and I knew they knew what to do in a compliant manner. I did not know the specifics of the employee manual. That was my testimony. I'm sorry. I --

you're asking me something else, but I don't -- I can't answer what you're asking. I don't know the employee manual.

Q Okay. And as you sit here right now, you're not prepared to give the judge any information that would show that there's any written policy of any kind that corroborates your -- the policy that you've described, correct?

A Written evidence? I know it to be approved at the highest levels by Thomas Surgent, whatever Jason Rothstein does with the phones. That's all I know. I assume it's memorialized in -- somehow in the employee manual, but I don't know, nor should I.

MR. MORRIS: I move to strike, Your Honor. It's a very simple question.

THE COURT: Sustained.

BY MR. MORRIS:

Q Sir, Jason Rothstein was on your witness list for this hearing; isn't that right?

A I believe he was at one point.

Q And you and your lawyers actually served him with a subpoena; isn't that right?

A I do believe -- yes, I do believe I heard something about that.

Q And so you had him under your control to come here today to give testimony to corroborate what you testified to on the cell phone policy. Isn't that right? You could have had him

come tell the judge what you've testified to, correct?
A I guess.
Q But you didn't, right?
A We didn't believe it was necessary.
Q So, so you're not aware of anything in the employee handbook that corroborates the cell phone policy that you've described, correct?
A We went over it in detail. I don't want to pull up those pages again. But it either says it or it doesn't on those pages. So, --
Q Okay. I'm going to try once again. You are not aware, as you sit here right now, that there is anything in the employee handbook that corroborates the cell phone policy that you've described, correct?
A I don't know.
Q And there's not a single document on your exhibit list that corroborates the cell phone policy that you've described, correct?
A I don't know.
Q And Jason Rothstein, who you've testified a whole lot about, was on your witness list, but you didn't call him today to testify, correct?
A Yes. We didn't believe we needed him.
Q Okay. And let's talk about the policy itself that you've described. Is there any exception to the policy that you've

described for saving text messages if you are personally a target of an investigation?

A I have no idea.

Q So, so the policy that you've described, to the best of your knowledge, doesn't contain an exception that maybe you shouldn't do those things if you're the target of an investigation. Is that right?

A No. I'm just saying that when Jason and Thomas Surgent had my phone, they could have done anything they wanted to.

MR. MORRIS: I move to strike, Your Honor. I'm asking him about the policy that he's described.

THE COURT: Sustained.

BY MR. MORRIS:

Q Sir, when you negotiated the corporate governance settlement, part of that settlement was to state that the Creditors' Committee would share the privilege for estate claims. Do you remember that?

A Not specifically.

Q Do you remember that the Creditors' Committee had the authority to investigate claims against you?

A I believe they were doing that during that six, seven months in the beginning of the estate.

Q Okay. So is there any exception to your policy that you've described with regard to cell phones that would say maybe I shouldn't throw away the cell phone if I'm the subject

of an investigation?
A I don't want to speculate.
Q Okay. You're not aware of an exception to that policy, right?
A I don't want, yeah, I don't want to speculate. I don't know.
Q Is there an exception -- is there an exception to the policy to perhaps not throw away the cell phone if there's a court order that grants a Creditors' Committee the right to the text messages?
A I don't know.
Q You don't know? Okay. We talked about Mr. Rothstein. We talked about the handbook. Just to complete it, are you aware of any document anywhere in the world that's going to be put before the judge today that's going to corroborate the cell phone policy that you've described?
A I -- I don't know. But I would say I challenge you to tell me a different policy.
Q Okay. We looked briefly at the letter that my firm sent to your lawyers on December 23rd when they asked for the cell phone back and they made a very specific statement about the text messages. Do you remember that?
A No.
Q All right. Let's take a quick look at it. And it's Exhibit -- (pause).

MR. MORRIS: It's Exhibit 27, please. And if we can go down to the bottom of Page 2.

BY MR. MORRIS:

Q And this is where they -- they -- the Debtor informed your lawyers that it would be terminating the cell phone plan and they asked for the immediate turnover of the cell phone and they told you to refrain from deleting or wiping any information, right?

A Yes.

Q And you testified earlier that you actually discussed this letter with your lawyers, right?

A Yes.

Q Okay. And let's look back at what your lawyers' response is.

MR. MORRIS: Exhibit 22, please.

BY MR. MORRIS:

Q Now, in this letter, it says, in the second sentence, quote, We are at present not sure of the location of the cell phone issued to Mr. Dondero by the Debtor.

There is no doubt that the -- that the phone that's at issue here was the -- was the Debtor's cell phone, the Debtor paid for it, correct?

A I don't know that.

Q But you've already testified to it; isn't that right?

A Well, if I did, I was guessing. I don't know.

MR. MORRIS: Can we put up Page 55 from the transcript, please? And -- I'm sorry. One sec. Lines 10 through 13.

BY MR. MORRIS:

Q (reading) "Until December 10th, the day the TRO was entered, you had a cell phone that was bought and paid by the Debtor, right?" Answer, "Yes."

Did you give that answer the last time you were examined in this courtroom, sir?

A Yes.

Q Okay. And in fact, not only did you know that it was paid for by the Debtor, but you actually knew the last time you testified that the phone was thrown in the garbage, right?

A That's correct.

Q Is that correct?

A Again, I just assumed. But I -- I don't know the answer for sure to either question. But there's a way to find out whether or not the company paid for it and there's a way to find out whether or not it was in the garbage, too. But I don't know for sure.

MR. MORRIS: Can we go to Page 65, please? Right there, Lines 6 through 8. We'll go to Line 4.

BY MR. MORRIS:

Q Question, "We were a couple of weeks too late, huh?" Answer, "It sounds like it." Question, "Yeah. Because the

phones were already in the garbage, right?" Answer, "Yes."

That was the testimony you gave then, right?

A Yeah. We went over this earlier today.

Q Okay. I just want to make sure.

MR. MORRIS: And now let's go back to Mr. Lynn's letter to the Debtor about the cell phone.

BY MR. MORRIS:

Q There's absolutely nothing in this letter about the policy that you testified to under questioning from Mr. Wilson, correct?

A Not that I could see.

Q There's nothing in this letter, after discussing -- withdrawn. After discussing the Debtor's letter with your lawyer, your lawyer wrote this letter and it doesn't say anything about a practice, a company practice that would align itself with the policies and procedures that you've described, correct?

A Yes. We'll have to -- I was on vacation. We'll have to chastise Judge Lynn for not reading the employee manual or my deposition. I don't know what to say here.

Q Well, forget about the employee manual and the deposition. You actually spoke to him about the Debtor's letter, right?

A Not -- not for an extended period of time, I'll tell you that.

Q Okay. Well, in any event, Mr. Lynn doesn't tell the

Debtor, what are you talking about, Mr. Seery knows all about this and approved it all, right?

A Okay.

Q He -- right? Mr. Seery's not mentioned in this letter, correct?

A Correct.

Q The only statements in this letter about that cell phone are that it was issued to you by the Debtor, that they're not sure of the location, and that you're not prepared to turn it over. Correct?

A Yes. I guess that's what it says here.

Q Okay. Let's talk about that trespass for a bit. You testified that on December 14th you gave a deposition in the Debtor's office and nobody complained. Isn't that right?

A Yes.

Q That's because the Debtor had not yet evicted you from their offices. Isn't that right?

A Yeah, correct. But the TRO was in place.

Q But the reason that the TRO becomes important is because, as you testified earlier, it has that provision about the automatic stay relating to the Debtor's property. Right?

A Yes.

Q And the Debtor evicted you from the property on January -- on December 23rd, right?

A Effective the 30th, yes.

Q Yeah. And the Debtor told you that if you were on their property again, they would consider it trespass, correct?
A They sent me a calendar invite.
Q All right. We looked at those shared services agreements before. Is that right?
A Yes.
Q Okay. Anything in the shared services agreements that requires Debtor employees to take actions that are adverse to the Debtor?
A No.
Q Okay. So when you were the CEO, would you have allowed or required your employees to take action on behalf of the shared services partner that you believed or knew were adverse to the Debtor's interests?
A I'd expect them to honor the contracts. I -- it would depend on what the issue was.
Q Okay. Does the contract require the Debtor's employees to take actions that are adverse to the Debtor's interests?
A Read implicitly, yes, because whenever you manage money for somebody, your fiduciary responsibility trumps what issues that might be adverse to the Debtor. Or adverse to the company.
Q Can -- if I put the documents on the screen, will you be able to tell me where the shared services agreement provides for the resolution of conflicts between the service provider

and the service receiver?
A I don't believe it does, unless there's an arbitration clause. But -- but I don't know.
Q Okay. Let's talk about the trading for a minute. You insist that you did absolutely nothing to interfere with the trading; isn't that right?
A I tried hard to interfere with the November trades. I did nothing to interfere with the December trades.
Q Okay. Let's test that theory for a moment.
MR. MORRIS: If we can go back to Exhibit 27, please. Page 2, the top of Page 2.
BY MR. MORRIS:
Q This is where the -- this is where the Debtors tell your lawyers of their belief that you've interfered with the trading of the AVYA and the SKY securities on December 22nd, correct?
A Okay. But I'm telling you, I did not interfere on the 22nd.
Q I'm just asking you, sir, a very simple question. This is where the Debtors are informing your lawyers of their belief that you interfered with the trades on December 22nd. Correct?
A Yes.
Q Okay. Can you point to me where your lawyers wrote back and disputed that contention?

A I don't know if they did.
Q But they did write back in response to this very specific letter on the issue of the cell phone? We just looked at that response, right?
A Yes.
Q But you don't have any recollection and there's nothing in the record that will show that your lawyers disputed the allegations about your conduct on December 22nd, correct?
A Not that I'm aware of.
Q Okay. I appreciate that. And, in fact, notwithstanding what you testified to today, you testified previously rather unambiguously that, in fact, you did interfere with the Debtor's business, right?
A I clarified that -- I clarified that half a dozen times in the last few weeks. I mixed up the November and the December time frames a couple times. Or once, really.
Q Okay.
MR. MORRIS: Okay. Can we go to Page 73?
BY MR. MORRIS:
Q In case you were confused about the date, let's just look at the transcript, Page 73.
Were you asked these questions and did you give this answer? Question, "And you personally instructed, on or about December 22, 2020, employees of those Advisors to stop doing the trades that Mr. Seery had authorized with respect to SKY

and AVYA, right?" Answer, "Yeah. Maybe we're splitting hairs here, but I instructed them not to trade them. I never gave instructions not to settle trades that occurred, but that's a different ball of wax." Question, "Okay. But you did instruct them not to execute the trades that had not yet been made, right?" Answer, "Yeah," and then you went on.

That was the testimony that you gave at the time, correct?

A We went over this earlier today. I've clarified this several times. There is nobody, there's no emails, there's no one who says I contacted them on the 22nd. I misspoke. I contacted everybody the week of Thanksgiving. The only thing I did on the 22nd of December was one email to Jason Post, full stop, period. You have the system. If I am lying or you had any evidence of me talking to somebody else, you would have it, instead of just making me clarify this for the fifteenth time.

Q Well, I do have evidence, sir. I have -- I have the Debtor's letters to your lawyers that your lawyers didn't respond to. Isn't that correct?

A That's not evidence.

Q Okay. It actually is evidence, but I won't argue with you.

You testified a bit about Dugaboy and the financial statements. Do you remember that?

A Yes.

Q And you had no objection to those documents being produced? Is that right?
A Well, once I delegated it to my -- to Douglas, I let him handle it, and I haven't kept abreast of him. I don't even know where it stands at this point. But I trust him to do the right thing.
Q Does Ms. Schrath work for one of your -- one of the companies that you own or control?
A Yes. We -- yes, she does now.
Q Will you -- will you to authorize her to speak with the Debtor in order to identify where on the Debtor's server the Dugaboy financial statements are located?
A I think the proper channel is I'll authorize -- and he is fully authorized already -- Douglas Draper to appropriately work with you guys on an appropriate request for appropriate materials. But I -- I'll do whatever Douglas tells me is appropriate, but otherwise I'm -- I'm not going to get involved.
Q But Melissa Schrath was the one who knew where the documents were. Isn't that right? That's why you specifically went to her and told her not to produce the documents without a subpoena, correct?
A She keeps the records. So, --
Q Okay.
A But anyway, but she will -- she will march to what -- I

promise you she'll march to whatever Douglas tells her to do, so you work it out with Douglas.

Q I'm not asking you about Douglas. I'm asking about you, James Dondero, would you authorize your employee, Melissa Schrath, to provide information to the Debtor that will allow the Debtor to obtain these documents?

A Only after approved by Douglas, the counsel for Dugaboy.

Q Okay. Let's see what Douglas said previously, because they're your exhibits, actually.

MR. MORRIS: You know what, Your Honor, I'm not going to do this. I'll save it for argument. Because Exhibits 16 through 20 on the -- on Mr. Dondero's exhibit list are all the emails with Mr. Draper. He has no knowledge of the -- of Mr. Dondero's email about the subpoena. He has -- he is actually looking to get the documents, but he's being undermined.

BY MR. MORRIS:

Q Let's talk -- let's talk briefly about Mr. Ellington. You testified that he was settlement counsel, right?

A Correct.

Q After the TRO was entered into, do you know whether your lawyers ever made any attempt to confirm with the Debtor that the Debtor was comfortable, notwithstanding the TRO, having Mr. Ellington talk to you about issues other than shared services?

A No, but he was.

Q Okay. Do you have any documents to corroborate your testimony that, after the TRO was entered into, and notwithstanding the very strict prohibition on communicating with employees other than shared services, any document at all that corroborates your testimony that Jim Seery authorized Mr. Ellington to continue to talk about topics other than shared services?

A No.

Q Okay. I appreciate that.

MR. MORRIS: Your Honor, I have no further questions.

THE COURT: All right. Mr. Wilson, anything further?

MR. WILSON: I'll have a short redirect or recross, whatever this is.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Dondero, you testified under my examination and then again under Mr. Morris's about the cell phone policy that was put in place by Thomas Surgent. Do you remember that testimony?

A Yes.

Q Are you aware if there was ever a written policy regarding the cell phones?

A I -- I don't know. But I would have assumed it was in the employee manual.

Q But whether there was or there was not a written policy in place, you testified that you were instructed in compliance with that policy with annual meetings, correct?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

MR. MORRIS: Leading.

THE COURT: Overruled.

BY MR. WILSON:

Q Do you recall my question, Mr. Dondero?

A I think I said yes.

Q Okay. Were you the only one at Highland who followed that cell phone replacement procedure that you were trained on by Thomas Surgent?

MR. MORRIS: Objection to the form of the question.

THE COURT: Sustained.

MR. MORRIS: Calls for speculation.

THE COURT: Sustained.

THE WITNESS: Again, the --

THE COURT: Sustained.

THE WITNESS: The policy wasn't --

THE COURT: No, no, no, no.

THE WITNESS: -- set --

THE COURT: That means don't answer. I sustained the objection.

Mr. Wilson, go ahead.

BY MR. WILSON:

Q All right. Mr. Dondero, are you aware of any other employees that followed that cell phone replacement policy at Highland?

MR. MORRIS: Objection to the form of the question. There's no foundation that anybody else -- I'll just leave it at that. No foundation.

MR. WILSON: Well, I'm -- Your Honor, I'm asking if he has personal knowledge of other employees. We're trying to establish a foundation.

THE COURT: Overruled.

THE WITNESS: My belief, the policies weren't set up in anticipation of bankruptcy or anticipation of infighting. In anticipation --

(Interruption.)

THE WITNESS: John, you're -- John Morris, you're making noise in front of the speaker again.

MR. MORRIS: I apologize. Thank you.

THE WITNESS: The policy wasn't set up in anticipation of bankruptcy. The policy was set up to prevent recycled, refurbished cell phones of former executives forming -- falling into a Sony-type scandal where the business emails get promulgated all over the Internet or something. It was meant to protect investor information, and that's -- that's my belief regarding the wiping of the phone.

And I believed and my knowledge is that it was for every senior manager, senior executive when they got a new phone at Highland. It wasn't just me.

BY MR. WILSON:

Q And to confirm your earlier testimony, the last time you saw your cell phone was when you handed it to Jason Rothstein, who's a former Highland employee, correct?

A Yes.

Q And if that phone was indeed wiped of the information on it, who performed that wiping?

A Jason --

MR. MORRIS: Objec...

THE WITNESS: -- or one of the guys on his team.

THE COURT: Okay. Hang on.

MR. MORRIS: Objection to the form of the question. Speculation.

THE COURT: Yeah. Sustained.

BY MR. WILSON:

Q Did you wipe the phone yourself, Mr. Dondero?

A No.

Q Why would you have testified in the past that the phone might have been destroyed or disposed of?

A Because that's what I assumed or thought happened to prior cell phones.

Q But in any event, you did not destroy or dispose of your

cell phone in December of 2020, correct?

A No, I did not.

Q Now, in December of 2020, did Dugaboy and the Get Good Trust hire Douglas Draper to represent their interests, and one of the issues that Mr. Draper had to address was the production of trust documents, correct?

A Yes.

Q Did you communicate with Mr. Draper any unwillingness to produce those documents?

A What I said, which I had testified to, I bought he was aware of the initial response of not without a subpoena, but then he was -- he didn't consider the information a big deal and so he just wanted to see it before it went out. And again, I thought that he was negotiating well with the Pachulski lawyers and I didn't know where that stood, but I wouldn't have been surprised if the information had been provided or was about to be. I don't know. I delegated it to him.

Q In the text that was sent to Melissa, --

MR. WILSON: Can you pull up Debtor's 19?

BY MR. WILSON:

Q I'm going to pull up Debtor's 19, which is the text string with Melissa. And what's --

MR. WILSON: Go down.

BY MR. WILSON:

Q What's the date on the text regarding the Dugaboy Trust?
A The 16th.
MR. WILSON: Okay. Go to our -- go to our 16. And this is going to be Dondero Exhibit 16. Go to the bottom of Page 2.
BY MR. WILSON:
Q Do you see this email at the bottom of the page from Douglas Draper --
A Yes.
Q -- to John Morris and Isaac Leventon? And what's the date of that email?
A The 15th.
Q Okay. So that's the day before you sent the text message to Melissa, correct?
A Yes.
Q So Mr. Draper was already coordinating with the Debtor's counsel to produce these documents prior to your text to Melissa, correct?
A Yes.
Q All right.
MR. WILSON: I have no further questions.
MR. MORRIS: Can we keep that document up on the screen for a moment?
THE COURT: All right. Normally, this would be the end of Mr. Dondero's examination, with recross, but it was

technically redirect as well, so Mr. Morris, you get the last short, and please make it brief.

MR. MORRIS: Yeah. Sure.

FURTHER REDIRECT EXAMINATION

BY MR. MORRIS:

Q The email that -- the email we just looked at was from Douglas Draper dated December 15th, right?

A Yes.

Q And Douglas Draper represents Dugaboy, correct?

A Yes.

Q And yet you're telling the Court that your lawyers told you, notwithstanding a TRO that prohibits you from communicating with Debtor's employees, except for shared services, that they thought you should be the one to instruct Melissa Schrath not to produce the Dugaboy documents without a subpoena? Is that your testimony, --

A That's correct.

Q -- that your lawyers told you to do that?

A That's absolutely correct.

Q Okay.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Mr. Dondero, that concludes your testimony today.

All right. We have one more witness, Mr. Seery, correct?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. Maybe --

MR. MORRIS: I hope this isn't too long, actually.

THE COURT: Maybe some people want to watch basketball. I don't know.

All right. Mr. Seery, could you say "Testing, one, two" so we pick up your video?

MR. SEERY: Testing, one, two.

THE COURT: All right. I hear you but I don't see you yet. Let's see if we --

MR. SEERY: Testing, one, two, Your Honor.

THE COURT: Okay.

MR. SEERY: Testing, one, two.

THE COURT: There you are. Please raise your right hand.

(The witness is sworn.)

THE COURT: All right. Thank you. Mr. Morris, go ahead.

MR. MORRIS: All right, Your Honor. I'll try to be as quick as I can here.

JAMES P. SEERY, JR., DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, did the Debtor -- did the Debtor's independent board --

(Interruption.)

THE COURT: All right. We are getting some sort of feedback. So everyone but Mr. Morris, and Mr. Seery, when he answers, please have your device on mute.

Go ahead.

THE CLERK: Mr. Morris is on mute.

THE COURT: Okay. Now you're on mute, Mr. Morris.

MR. MORRIS: All-righty. Let's see if this works.

BY MR. MORRIS:

Q Mr. Seery, can you hear me now?

A I can, yes.

Q Okay. Did the Debtor's independent board make a decision in early October to demand Mr. Dondero's resignation?

A Yes.

Q And why -- what were the reasons?

A Quite simply, he was taking aggressive actions, interfering with the operations of the Debtor and our pursuit of a plan. Objections, claim objections, even things as far-fetched as piercing the corporate veil, which we're surely going to see later on in this case.

Q And did there come a time a few weeks later that the Debtor sought and obtained a TRO against Mr. Dondero?

A That's correct, yes.

Q And is it fair to characterize Mr. Dondero's relationship to the Debtor in December of 2020 as adverse?

A Extremely.

Q And why would you describe the Debtor's relationship with Mr. Dondero in December 2020 as adverse?
A Well, the discussions regarding any kind of bargain plan had really fallen apart. Mr. Dondero was actively objecting to the pursuit of the monetization plan, either individually or through his multiple entities. He had begun to move forward on litigation strategies versus me. And those, among other reasons, were the reasons that it had become extremely obvious that we were adverse.
Q I'll try to do this as quickly and as easily as I can. You were here this morning for my opening statement; is that right?
A Yes.
Q And did you listen in and watch my examination of Mr. Dondero when I went through the 13 email communications with the Debtor's employees?
A Yes.
Q Were you aware of any of the communications that we looked at today --
A No.
Q -- at the time that the communications were made?
A Well, yeah, I'm obviously aware of them today. They're on your schedule. But I was not aware of them at the time they were made, no.
Q Okay. And is it fair to say, then, that you did not

authorize any of those communications?
A They were definitely not authorized.
Q And having reviewed those communications, do you believe that those communications, each of those communications was adverse to the Debtor's interests?
A They were extremely adverse to the Debtor's interests. They -- they even went so far as to be coordinating shared privilege among adverse parties who were contesting the Debtor's actions with respect to both claims and the plan monetization process. What could be more adverse?
Q Had you known of these communications at the time they were made, do you have any idea as to what you would have thought or what you would have done?
A We would have terminated the employees involved. In fact, when they found out about them, we terminated the employees involved.
Q Okay. And why did you take that step when you learned about these communications?
A The -- some of the issues with respect to Mr. Dondero and certain employees have been brewing for some time, but these were just all examples of employees breaching their duties to the Debtor and taking adverse interests and pursuing them against the Debtor. And we couldn't continue to have those employees in place.
Q Okay. Let's just move quickly to the issue of the cell

phone policy. Did you listen to Mr. Dondero's description of the cell phone policy pursuant to which they could recycle phone numbers or change the account holders and wipe phones clean?

A Yes, I heard it.

Q Okay. Are you aware of any written policy that supports that?

A No. That testimony was largely made up. The policy -- just so we're clear, and this is pretty typical -- and he knows this, of course -- but when someone has a phone at a financial firm, often you get your emails on the phone. When you leave the employ, that's deleted, because it's gone -- the server is the one that connects with your phone. It's not like your Yahoo. This is very standard. The rest of the data on the phone is not deleted and wiped unless you go wipe it.

Mr. Dondero's phone was paid for by the Debtor. Not only Mr. Dondero's phone, his housekeeper's phone, Ellington's phone, his driver's phone, his iPad in Florida. This -- he knows this.

Q And --

A They have the documents. I have them in front of me. Sorry.

Q That's okay. With respect to the trades, you heard some testimony about the trades and how Mr. Dondero insists that

he didn't do anything to interfere with the trades in December. Do you have any -- any knowledge or information that you can share with the Court on the Debtor's allegation as set forth in the letter that we looked at, that, indeed, on December 22nd, Mr. Dondero was involved in interfering with the Debtor's trading activity at that time?

A I think it's pretty clear, and my recollection was that he very directly instructed employees of HCMFA as well as Jason Post to prevent those trades from going through. His description of an OMS system and compliance was complete nonsense. These trades are compliant. You don't have to run a trade through an OMS system to be compliant. They were screened against the restricted list. It's -- it didn't have any basis in fact, what he was saying.

Q Okay. Let's talk just about -- about harm to the Debtor from the breaches that we have been discussing today. Has the Debtor suffered any economic harm, any financial harm, from Mr. Dondero's conduct with respect to the TRO violations?

A Well, I think -- I think the combination of the TRO violations and the continuing attempts to just make the Debtors spend a lot of money. We've spent literally millions, more than a million dollars, just on litigating TRO issues, just dealing with the initial TRO, the hearing, the order, the various appearances, the preliminary injunction,

and taking the preliminary injunction to this stage. We then, with respect to the trades, had to litigate those issues with both Mr. Dondero and his multiple related parties. We had to both pay your firm, DSI, not to mention individual time, but also Kasowitz, as you mentioned, we went out and hired with respect to some of the CLO issues in the litigation.

It's literally millions of dollars. And that doesn't even get to the multiple millions that were spent negotiating the transition that Mr. Dondero talked so glowingly about that he did nothing but throw (garbled). These are not -- these are not my guesses. This is not my supposition. I'm not thinking these are the case. These are just facts. And that's been his design, and he's doing it well. He's making us spend a lot of money.

There's no rebuilding Highland. The employees have been terminated. The contracts have been rejected. Highland, remember, was run to lose money. I've testified to this before. It was designed and he uses it to siphon off lots of value to these other entities. And we're going to keep seeing this. So it will continue to come.

But these actions with respect to blaming it on Jason Rothstein or claiming that Thomas Surgent ever touched his phone: complete nonsense. Not true. Didn't happen. Rothstein followed his orders. Great example of Dondero's

interference and contempt. He's just controlling these employees because they know ultimately they're going to be, many of them, working for him again. So their only avenue to remuneration is -- continued employment, is to do what he asks them to do. And you figure these are, you know, these are some really good folks. Jason Rothstein is a very talented and I think very ethical guy. To throw him under the bus like that is absurd. He doesn't --

Q Um, --

A By the way, he doesn't work for me. Right now.

Q Okay. Let's talk about noneconomic harm. We -- you saw the three categories that we went through from the -- from the 13 communications with the Debtor's employees, the three alleged violations of the automatic stay, the interference with the trading. Do you have a view or a, you know, knowledge that you can share what the Court as to whether the Debtor suffered noneconomic harm from these violations of the TRO?

A Well, absolutely. And I think it's pretty clear, and some of it is from Mr. Dondero's own testimony. A lot of confusion among the employees during the transition. So, in order to make sure that we could try to hold them through the transition and to complete a transition, we -- we entered into a KERP program. We actually spent a lot of money in designing it, coming up with it and bringing it to this

Court.

These employees are confused about where they're going. Are they going to go to this Newco, which is going to have to provide services to Dondero entities? Are they going to go to Dondero entities? That confusion made it more difficult for us to retain employees, and more expensive.

In addition, we went through the whole process of the KERP program. No one who is retaining employee -- employment with either Mr. Dondero or with the Newco actually ended up taking the KERP. They turned down money because he required them, in order to get a job with them, to give that money up and assign their claims to him, which he intends to try to use in some other way to slow up the case or cause more damage, make us spend more money. It's inconceivable. And I'm talking about employees who had a $2,500 KERP payment. He took them. It's crazy.

Q Um, --

A I apologize if -- since I'm not in the courtroom, Your Honor, I'm probably not as formal as I should be. I will -- I will -- I will endeavor to be a little bit more formal. My apologies.

THE COURT: Okay.

BY MR. MORRIS:

Q Did you have any -- did you have any concerns about the conduct that's been presented today in terms of undermining

your own authority as the CEO of the Debtor?

A Well, it's -- it's been very clear. And, again, that relates to both retaining employees and then working on transition services arrangements. We had a whole hearing a couple weeks ago on how the Fund Advisors and the Funds didn't need anything from Highland. They just needed old records. Well, it turns out, we've been working three weeks negotiating the shared resource agreement, that wasn't quite true.

And so we think we have something in place, but it's been much more difficult to get these kinds of arrangements done because authority has been undermined and because employees who are working in that sphere and working on the transition are worried about what the next opportunity is going to be for them. So it's been very, very difficult.

In addition, during January, because of this undermining, we saw some significant cover-ups around certain transfers. Those will be coming to light soon. But it -- I don't think these would have happened without Mr. Dondero's influence, his -- his contumacious conduct with respect to the Court, with respect to the authority, with respect to the transition, frankly, that he initiated when he started this bankruptcy.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Mr. Wilson, cross?

MR. WILSON: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Seery, the Debtor filed the contempt motion on January 7th, correct?

A I don't recall the specific date, but if you represent it, I assume that to be true. Don't know.

Q Do you recall that the Debtor also filed a motion for an expedited hearing on the motion for contempt?

A I -- I believe so. I don't recall the specifics.

Q And the Debtor filed a memorandum of law setting forth the actions that it contends constitute violations of the TRO. Were you aware of that?

A I assume there was an accompanying memorandum of law, yes.

Q Well, did you see a memorandum of law that was filed?

A I certainly would have seen the pleadings. I don't recall whether I read the memorandum of law.

Q Well, did you participate in the process of determining the allegations that the Debtor was alleging should be held in contempt?

A I'm sure they were reviewed with me. I don't recall the specifics of how they were laid out in the pleadings. But I'm sure that counsel reviewed them with me.

Q Well, who decided for the Debtor to make the contempt allegations?

A Ultimately, the decision would have been mine, under the advice of counsel.

Q But did you -- did you not tell counsel what you -- what you contended was a violation of the TRO?

MR. MORRIS: Objection to the form of the question and direct the witness not to answer. He's really asking about Mr. Seery's communications with his lawyers, Your Honor.

THE COURT: Sustained.

MR. WILSON: I'll ask it a different way.

BY MR. WILSON:

Q Who came up with the idea of which allegations were going to be made, were contempt?

MR. MORRIS: Objection. Direct the witness not to answer.

He can ask him about Mr. Seery, but these questions are going to get into attorney-client privilege.

THE COURT: All right. Sus...

MR. WILSON: Your Honor, I'm not asking him to reveal any attorney-client privilege. I'm just asking for his knowledge of who came up with these allegations, outside of counsel.

THE COURT: I sustain the objection.

BY MR. WILSON:

Q Did you yourself form the allegations that were going to be in the contempt motion?

A I certainly gave the recitation of facts to my counsel as to what was happening in the case and Mr. Dondero's actions.

Q Is it the Debtor's contention that Mr. Dondero's willful ignorance of the TRO and the evidence supporting the entry of the TRO is itself contemptible?

A I think I'm answering your question. I -- I don't believe that he was ignorant of it. I think the insinuation, if it's claimed that he's ignorant of it, is highly contemptible, yes.

Q I'm sorry. I didn't understand that. You don't believe that Mr. Dondero was ignorant of the TRO?

A No, I don't believe that at all.

Q Well, so if Mr. Dondero -- if the Debtor contended that Mr. Dondero was willfully ignorant of the TRO, do you disagree with that statement?

MR. MORRIS: Objection to the form of the question. I mean, the -- the evidence is what the evidence is. It's not about our contentions at this point.

THE COURT: I overrule. He can answer.

THE WITNESS: Yeah, I don't -- I don't -- I disagree with that statement. I think, to some degree, I think that the idea that a -- no one's that obtuse, that a relatively

sophisticated man who is fighting for this wouldn't have any idea that there was a TRO in place I think is -- is far afield.

Q Which specific provision of the TRO do you contend that Mr. Dondero violated with respect to his cell phone?

A I'd have to go through each of the -- each of the provisions. I -- I don't have a list of them in front of me.

Q Well, I can put it up on the screen.

A Okay.

MR. WILSON: Can you pull up Debtor's 11?

(Pause.)

BY MR. WILSON:

Q Well, there's provision -- well, Paragraph 2, which has the various provisions in it.

A Just, just starting from there, this is -- this is -- I'm walking through this now. You're going to hear the same. He clearly communicated with Debtor employees, directing them to do something with his phone that had no basis in policy, was clearly destroying property of the Debtors, and I think violates (a) to start with. I -- just to start. I don't have the rest of the -- rest of the paragraph.

MR. MORRIS: Can we -- can we scroll down so he can see the rest of it before he finishes his answer?

MR. WILSON: I thought he was finished.

MR. MORRIS: Well, you haven't shown him the whole

document.

THE WITNESS: I mean, as we talked about earlier, (e) is pretty clear, too. This is destruction of property of the estate and these records. And -- and with respect to wiping it clear, as was previously discussed. I don't think that that's really debatable.

Q Who is Jason Rothstein?

A Jason was the head of IT at Highland. He's a longtime employee of Highland, had worked for Highland I think at least ten years.

Q Have you ever had a conversation with Mr. Rothstein about the Debtor's cell phone policy?

A I think I have.

Q And when was that conversation?

A I believe in and around this time, we talked about it. Because it was pretty clear -- the testimony that Mr. Dondero gave was completely untrue. I've never issued any edict, order, or statement that people lose their job --

MR. WILSON: I'm going to object to nonresponsive.

THE COURT: Sustained.

BY MR. WILSON:

Q What did Mr. Rothstein tell you that the Debtor's cell phone policy was? And by that, I mean the replacement policy.

MR. MORRIS: Objection to the form of the question.

THE WITNESS: I didn't testify to that. I didn't say that.

THE COURT: I overrule.

THE WITNESS: I know -- it -- that's not what I said.

BY MR. WILSON:

Q Well, did Mr. Rothstein ever tell you anything about the Debtor's telephone policy?

A I don't believe so, no.

Q But in any event, we can agree that Mr. Dondero turned over his phone to Mr. Rothstein, correct?

A It appears that way from the information we have.

Q And you testified that Mr. Rothstein is an ethical and honest individual, correct?

A I believe he is, yes.

Q And so are you -- are you insinuating by your testimony earlier that Mr. Dondero caused Mr. Rothstein to do something improper with the cell phone?

A Yes.

Q But yet you said that Mr. Rothstein is an honorable and ethical person, correct?

A Yes.

Q And so does -- how do you square your opinion with him as being honest and ethical, but yet he did something improper under Mr. Dondero's direction?

A I think Mr. Dondero told him to get him a new cell phone or wipe that one clean and he did so. And he's not a lawyer. He's an IT professional. If there was email, it was backed up. He may or may not have known how much Dondero used texts to conduct business.

But he would have done what he was told to do because that's what he was expecting -- where he expects to be working at some time in the future. It's a perfect example of why there was a TRO in place and why this kind of contumacious conduct is harmful to the estate.

Q From the time that you took over as an independent board member and also as CEO later, did you or anyone else at the Debtor ask Mr. Rothstein to back up anyone's text messages when they turned their phone in for replacement?

A No. Not to my knowledge.

Q Did anyone at the Pachulski firm, to your knowledge, ask Mr. Rothstein to back up text messages from anyone's phone?

A Not to my knowledge, no.

Q And you're aware that other Highland executives have left the employment of Highland during the pending of this bankruptcy, correct?

A Not who had a phone that was Highland's phone.

Q So did Mark Okada not have a Highland phone?

A No, he did not.

Q Did Mark Okada have any Highland information on his phone

when he left?
A I don't know. He didn't have a Highland phone. We didn't seize his personal phone.
Q So does it depend on whether the phone was paid for by Highland whether or not that Highland should be able to access the information on the phone?
A That's not the policy, no.
Q Well, my question is, is that did you -- were you at all concerned about any information that might have been on Mr. Okada's phone when he left Highland?
A I wasn't because I had no experience with him texting me to conduct business.
Q Has the Debtor ever requested the phone company to search and see if they can recover any text messages from Mr. Dondero's phone?
A No, we haven't.
Q But the Debtor established a protocol for conducting electronic discovery in this case, correct?
A That's very different. The phone company doesn't maintain text chains for those who use Apple products. Apple maintains them.
MR. WILSON: Your Honor, I object as nonresponsive.
BY MR. WILSON:
Q I'm asking you a different question.
THE COURT: Okay.

BY MR. WILSON:

Q Did the Debtor establish a protocol for conducting electronic discovery in this case?

A I -- I believe there's an order in place.

MR. WILSON: Why don't you pull up 8? Yes. And go -- just scroll on the first page.

BY MR. WILSON:

Q This is Dondero Exhibit 8 that we're pulling up. Do you recognize this document?

A I'd have to see -- I don't. I'd have to see more of it. I'm only seeing a small snippet.

Q Okay. Well, we can -- we can scroll down to satisfy you. (Pause.) The top of the document is Notice of Final Term Sheet, and it looks like the date is January 14, 2020.

A Yes, I recognize this document.

MR. WILSON: Okay. Go to Page 44. Actually, go to 43. Yeah, that's it.

BY MR. WILSON:

Q Do you see -- I'm now looking at Page 43 of the document where it says Exhibit C, Document Production Protocol.

A I see it.

MR. WILSON: All right. Scroll down to the next page.

BY MR. WILSON:

Q And then it, in (a), it talks about ESI or

Electronically-Stored Information. And this appears to be the protocol for preservation of ESI. Would you agree with that?

A In accordance with the term sheet, yes.

Q Right. Are text messages referenced in this document?

A I don't know.

Q Well, if we scroll through letter C, where it says Preservation of ESI, do you see anywhere under Preservation of ESI where it refers to text messages?

A I -- I don't -- I don't see --

MR. WILSON: Then I --

THE WITNESS: I don't see it. This seems to be dealing with the server.

MR. WILSON: And then scroll down to I.

BY MR. WILSON:

Q And here's the final --

MR. WILSON: It's -- no, no, no. It's -- it's Page 45.

BY MR. WILSON:

Q This is -- letter (i) at the top is the final paragraph under that section. That seems to refer to hard drives and laptops and work computers, but does it -- do you see anywhere where it mentions phones or text messages?

A Doesn't use those words, but it certainly covers it.

Q But this would be the protocol that covers ESI that the

-- that Debtor agreed to, correct?
A I believe so, yes.
Q And you approved this protocol prior to its adoption?
A I don't believe so, no.
Q You didn't approve it?
A My recollection is this was right around the time we came in. I think this was part of the agreement that the Debtor had with the Committee. And I don't believe it was subject to independent board approval before its entry. I don't -- I just don't recall specifically. That's my recollection.
Q Did you -- do you recall if you participated in the development of this protocol?
A I did not.
Q But you would agree that this is the protocol that the Debtor agreed to adopt in connection with this bankruptcy case, correct?
A It is a protocol entered in January of 2020.
Q Do you have a Highland email account?
A I do.
Q Do you have a personal email account?
A I do.
Q And do you conduct Highland business on your personal email account?
A I do.
Q Do you preserve your personal emails?

A I do.
Q Do you have a Highland cell phone?
A No.
Q So do you use your personal cell phone for Highland business?
A Yes.
Q Do you preserve all your text messages?
A I don't delete them. I believe that they're accessible, yes.
Q Are your personal emails stored on the Highland server?
A No.
Q Are your text messages stored on the Highland server?
A No.
Q With respect to the motion filed by the U.C.C. in January 2020 relating to discovery, did the Debtor oppose the motion? Or I'm sorry. I said January. I meant July 2020.
A I believe we did.
Q Did the Debtor agree with the U.C.C. at that time to preserve and produce text messages?
A I believe that we did.
Q Do you know if that's in writing anywhere?
A The order was pretty broad. There was obviously significant -- I don't know if it's in writing anywhere.
Q During the pendency of this case -- well, I guess I need to ask a question before that. Who at the Debtor is

responsible for sending litigation preservation notices?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Currently, the general counsel.

BY MR. WILSON:

Q Currently, the general counsel? Well, who would -- who would have been responsible for sending it during the year 2020?

A Scott Ellington.

Q Were you aware of Thomas Surgent ever sending any litigation preservation notices?

A Since he became general counsel, he has, yes.

Q When did Mr. Surgent become general counsel?

A After Mr. Ellington was terminated.

Q Well, during the pendency of this case, have either Mr. Ellington or Mr. Surgent ever sent around any preservation notices pertaining to text messages?

A I was -- I don't know if it -- I assume they pertain to text messages. I -- I believe there was one, and I asked about it my first day at Highland, that it was -- it was a litigation preservation notice.

Q And that was around the time of your first day at Highland?

A Correct.

Q So, but since that time, are you aware of any

preservation notices pertaining to text messages sent?
A Not specifically, no. Well, certainly, Mr. Surgent's preservation notice since he became general counsel would cover that. I am certain of that.
Q But that would have been in January of this year, correct?
A Correct.
Q Did you ever ask Mr. Ellington or Mr. Surgent to send any preservation notices pertaining to text messages prior to Mr. Ellington's termination?
A I believe I asked on the first day that I was there about document preservation notice, did it go out? Didn't specifically reference text messages.
Q But after that -- after that preservation notice at the beginning of your employment, you're not aware of any other preservation notices that you requested should go out?
A I didn't make any requests after the first one went out.
Q And that -- and that request that went out or that notice that went out in January of 2020 did not specifically refer to text messages, correct?
A I don't know. I actually think, when it would have gone out in -- at the filing, any responsible general counsel would have issued it, and I was told that they did.
Q Are you aware of anyone at the Pachulski firm that asked Mr. Surgent or Mr. Ellington to send any preservation notices

pertaining to text messages?
A Certainly, Mr. Surgent, I don't know if Pachulski asked him, I certainly did, to redo it after we made some significant discoveries in January. But I don't know if Pachulski -- the Pachulski firm or anyone there asking -- it wouldn't have been Mr. Surgent. He was the CCO. It would have been Mr. Ellington, the GC. Other than the, as I said, the request I made in January to confirm that one was sent out at the start of the case.
Q Referring back to Mr. Mark Okada and also Trey Parker, were those individuals covered by the custodians of the U.C.C.'s request?
A I didn't -- I didn't understand your question. I'm sorry.
Q Were Trey Parker and Mark Okada custodians under the U.C.C.'s preservation request or discovery request?
A I don't -- I don't know.
Q Did you ever -- did -- both of those individuals left during the pendency of the Highland bankruptcy, correct?
A Yes.
Q Did the Debtor do anything to preserve text messages from either Mr. Parker or Mr. Okada when they left Highland?
A Not to my knowledge.
Q Now, earlier, you tried to testify about your knowledge of cell phone policies from other financial companies. Do

you recall that testimony?

A Yes.

Q And which financial companies are you referring to?

A River Birch Capital. And Lehman Brothers.

Q So you've -- you have two examples of cell phone policies that you were referring to?

A Well, I -- I know of others as well.

Q But you don't have any firsthand knowledge of Highland's policy, particularly going back ten years, correct?

A That's incorrect.

Q Well, were you -- did you -- were you a Highland employee ten years ago?

A No.

Q Did you attend training by Thomas Surgent on cell phone replacement policies?

A I don't believe there was such a thing. I attended compliance training with Mr. Surgent, yes.

Q But yet you -- you claim that Mr. Dondero made that testimony up, correct?

A Yes.

Q And you heard Mr. Dondero's testimony that ever since he's been attending these compliance training sessions over the last ten years, every time he's replaced his cell phone, he's followed the same procedure: handed it over to a Highland employee and then the Highland employee would wipe

it and provide him with a new cell phone. You heard that testimony, correct?

A I heard it, yes.

Q And you have reason to doubt the veracity of that testimony?

A Yes.

Q And what is that reason?

A Well, for one, his testimony about the numbers and how they got them was untrue, at least from information I've received from the earliest days.

Number two is that's not how you wipe a phone. You can wipe it remotely. That's how you remove access to the system. You don't need the guy's phone in order to wipe it. He had already done that after threatening me with a text and engaging in numerable -- innumerable engagements on texts to conduct business. And then when it became crucial and there were issues regarding his texts, he suddenly decided to get a new phone and destroy it. I found it to be incredible.

Q But you would have to agree with me that, regardless of whether Highland had a written policy, it was actually the Debtor who wiped Mr. Dondero's phone, correct?

A I don't -- I don't believe that to be the case and I don't know. Again, Highland can wipe the phone without having access to it. It can do it remotely. It doesn't delete the texts. It just removes your access to Highland's

system and the records of your emails. You'd still have your phone. You'd still have your texts. It's your phone.

Dondero's problem is it wasn't his phone. It was Highland's phone. So he couldn't just wipe it. He had to get rid of it.

Q But you would agree with me that if anyone wiped the phone, it was Jason Rothstein or someone working under his direction? You testified to that just a few minutes ago.

A The wiping of the phone does not wipe the texts. The wiping of the phone removes the email access and the email records that you can get on your phone when you work for a financial institution. Law firms may have the same thing, if they're sophisticated enough. It prevents that person from getting it. It doesn't clean out the phone. It doesn't get rid of everything you have.

The one problem with it is it does tend to remove your Out... a lot of your Outlook names, because those are connected to your work server.

MR. WILSON: I'll object as nonresponsive.

BY MR. WILSON:

Q You testified --

THE COURT: Overruled.

MR. MORRIS: Your Honor, can I -- can I have a ruling on that, please?

THE COURT: I said overruled.

MR. MORRIS: Because I thought it was terribly responsive.

THE COURT: I said overruled, yes. Thank you.

MR. MORRIS: Thank you.

BY MR. WILSON:

Q So, do you know who wiped the text messages off Mr. Dondero's phone?

MR. MORRIS: Objection --

THE WITNESS: I don't know --

MR. MORRIS: -- to the form of the question.

THE COURT: I didn't hear -- okay.

THE WITNESS: I don't know that the text messages were wiped.

THE COURT: Okay.

THE WITNESS: I'm sorry.

THE COURT: Time out. Would you repeat the question, Mr. Wilson?

BY MR. WILSON:

Q My question was, do you -- do you know who wiped text messages from Mr. Dondero's phone?

MR. MORRIS: Objection to the form of the question. No foundation.

THE COURT: Sustained.

MR. WILSON: Again, I'm trying to ask him if he has personal knowledge of something.

THE COURT: It -- you'll have to rephrase it.

MR. MORRIS: Your Honor, there's no -- he --

THE COURT: You'll have to rephrase what you said.

BY MR. WILSON:

Q Do you have personal knowledge of whether text messages were actually ever wiped off Mr. Dondero's phone?

A No, I don't.

Q So, therefore, if text messages were wiped on Mr. Dondero's phone, you would not have personal knowledge of who actually did it. Correct?

MR. MORRIS: Objection to the form of the question. Calls for speculation.

THE COURT: Sustained.

BY MR. WILSON:

Q Well, if you -- if you don't have personal knowledge that they've been wiped, I don't understand how it would be speculation that you don't know who would have wiped them if they were wiped, but --

MR. MORRIS: Objection. (garbled).

THE COURT: Sustained.

BY MR. WILSON:

Q Prior to becoming the CEO of Highland, did you change or implement a cell phone replacement policy?

A No.

Q Prior to Mr. Pomerantz sending his letter to Mr. Lynn on

December 23, 2020, had the Debtor notified Mr. Dondero that the Debtor wanted his cell phone?

A No.

Q And you're now aware that Mr. Dondero began the process of acquiring a new cell phone well before the TRO was entered on December 10th, correct?

MR. MORRIS: Objection to (garbled) question.

THE COURT: I couldn't hear. Was there an objection, Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: Say again what the objection was.

MR. MORRIS: To the form of the question, the use of the phrase "well before." I think the testimony is two weeks.

THE COURT: Okay.

MR. MORRIS: According to Mr. Dondero.

THE COURT: Sustained. If you could rephrase.

BY MR. WILSON:

Q So, you heard Mr. Dondero's testimony that he began the process of acquiring a new cell phone two weeks before the TRO was entered, correct?

A I heard it.

Q And as of December 10th, Mr. Dondero was still performing work at the Highland offices for the Funds and Advisors, correct?

A I don't know what he was performing. He was there.
Q Is it the Debtor's contention that Mr. Dondero violated the TRO by personally intervening to prevent the Debtor from executing certain securities transactions on December 22, 2020?
A Among other things, yes.
Q What actions of Mr. Dondero does the Debtor contend constitute Mr. Dondero's personal intervention to prevent the Debtor from executing certain securities transactions?
A With respect to the December ones?
Q Yes.
A Yeah, he -- he instructed, through either Post or Joseph Sowin, I don't recall specifically, that the trades not be completed. And notwithstanding that we were trying to get it done because we thought it was an advantageous time to make those trades, he got involved and prevented it.
Q What evidence have you presented that Mr. Dondero instructed Mr. Post not to complete trades?
A I believe when you put together his email and the letters from counsel, you'll see, when you piece them together, that that's what happened. I don't think Jason Post did this on his own.
Q So your testimony is speculation, correct?
A No. I think there's -- there's very specific instructions.

Q Well, have you brought that email with those very specific instructions before the Court?
A I think Mr. Morris did earlier.
Q Can you point me in the record to where that is?
A I -- I don't keep track of the exhibits, but this is the -- this is the stuff that Mr. Morris went through earlier today. I don't have -- I don't have it specifically in front of me.
Q In December of 2020, did Mr. Dondero send you any emails regarding the trades that you wanted to make?
A I don't believe he did, although he did email me on December 14th and -- or 4th, and he did email me on December 8th with an apology, and he did email me on December 17th with some material nonpublic information.
Q In December of 2020, did Mr. Dondero send you a text regarding trades that you wanted to make?
A In December? December 3rd, I believe, was his threat, and I don't believe I got a text from him after that.
Q In December of 2020, did Mr. Dondero call you regarding the trades he wanted to make? Regarding that you wanted to make.
A I don't believe so, no.
Q Did Mr. Dondero block any trades in December of 2020 that you wanted to make?
A I don't recall if we completed the -- the end of December

trades or we just determined not -- not to do them because it was too difficult.

Q But, in fact, every trade you initiated in December 2020 closed, correct?

A I don't -- I don't recall if the ones that we're referring to now actually closed or if we just decided not to do them. If I made a trade with --

(Interruption.)

A -- with a dealer, then we completed it. We didn't fail on any trades.

MR. WILSON: Which exhibit is it?

BY MR. WILSON:

Q All right. I'm going to pull up Debtor's 37.

MR. WILSON: Go to Page 173. Of the transcript. Go down where it says, "By Mr. Hogewood."

BY MR. WILSON:

Q Sir, do you recall giving testimony on January 26th in connection with Plaintiff's motion for a preliminary injunction against certain entities owned and/or controlled by Mr. James Dondero?

A I believe I did.

Q Do you recall being asked this question by Mr. Hogewood on Line 16? "Yeah, let me -- let me say it differently. Focusing solely on December of 2020, every trade that you initiated closed; isn't that correct?" A, "Every trade, yes.

We did not fail one trade."

MR. MORRIS: Objection. Objection. He's seeking to impeach Mr. Seery with the exact same testimony that he just gave.

THE COURT: What --

MR. WILSON: Well, I would disagree, Your Honor. Mr. Seery has equivocated on whether all of his trades went through in December of 2020.

THE COURT: He equivocated? I don't remember him being equivocal. Remind me of what the testimony was.

MR. WILSON: Well, I believe that Mr. Seery said that he thinks he gave up on some trades and decided not to complete them.

MR. MORRIS: Objection. The testimony that's being read into the record from the earlier hearing is not inconsistent with anything that Mr. Seery just testified to.

THE COURT: (reading) "Every trade that you initiated closed; isn't that correct?" "Every trade, yes."

I sustain the objection. I don't think it's inconsistent.

BY MR. WILSON:

Q Okay. Mr. Seery, would it be fair to say that the trades that we are referring to in that December 22nd time frame were initiated?

A I -- I don't recall. The -- and that's -- and I think

you're -- you're trying to create some ambiguity where there is none or inconsistency where there is none. I'm sorry. That if we initiated a trade, because I did them through a broker and told them sell or -- at a particular level on a particular day, if he was able to complete that and get a buyer on the other side, we completed the trade. So if we initiated it, we got it done.

I don't recall if those trades that we're talking about earlier were initiated. And this is a little bit of, I guess, inside baseball knowledge Mr. Dondero started going through a little bit before. Typically, the trades are put in through the order management system. It's easier to track the trades then. It's all automated. What we did instead, where we actually initiated a trade, was we did it manually. So we closed those trades manually. And to be clear, the order management system is not -- is not the Advisors'. It's Highland's.

Q Well, Mr. Seery, if the -- if the complaint is that the Advisors' employees did not book the trades, then those trades were initiated. Would you agree with that?

MR. MORRIS: Objection to the form of the question. Conflicts with the testimony.

THE COURT: Sustained.

BY MR. WILSON:

Q Do you understand the -- what's implicated by booking a

trade?

A Do I understand what's implicated by booking a trade?

Q Yes.

A Do I know how to book a trade? Yeah.

Q And would that not be a trade that has been executed? A trade that would be booked would not be booked until after it was executed, correct?

A That's correct.

Q And so the -- the trades that we are talking about in the December 22nd time frame were initiated and executed and then later booked, correct?

A Any trade would have been initiated, executed, and booked. That's the correct order.

Q All right. And you've previously testified, and you testified again today, that every trade that you initiated closed, correct?

A If --

Q In December 2020?

A If we initiated it and we got it done, of course. The issue is whether, when calling up the traders, if they refuse to actually initiate the trade or take it, that -- that wouldn't have closed.

Mr. Dondero didn't get this from some strange, you know, premonition from the sky. He's on a -- he was on a system that showed all of the trades. And that's where the email

back and forth, where he's on that list and says, Don't -- don't do this, both earlier and later, that's where those come from. It's not -- it's not that he had some great insight into what's going on. He's getting email.

Q And, in fact, you did not fail one trade in December 2020, correct?

A No. Didn't fail.

Q Is it the Debtor's contention that the K&L Gates law firm sending letters to the Pachulski law firm on December 22nd and 23rd was a violation of the TRO?

A I think it was, yes.

Q To be clear, these are letters between counsel, correct?

A They are.

Q And, in fact, K&L Gates is not Mr. Dondero's personal counsel, correct?

A That's what I'm hearing.

Q And K&L Gates at the time represented the Funds and Advisors, correct?

A I -- there's so many counsel, I don't recall if they represent just the Fund -- I think they represent just the Funds, not the Advisors. But if they represent the Funds and the Advisors, then I'd precedent your next question, because Mr. Dondero clearly controls the Advisors and he's -- he basically said so earlier today.

Q Can you tell me what threat means in the context of a

TRO?

A What a threat is?

Q Well, what -- what's meant by threat in the context of a TRO.

A I believe -- I believe that a threat is a -- either a statement or action that one takes against another that puts them at risk of some kind of loss or harm in order to get someone to do or not do something. I think that's the common -- relatively common usage of threat as I would use it.

THE COURT: Mr. Wilson, how much longer do you think you're going to take? I probably need to take a break if you're going to be much longer.

MR. WILSON: Yeah. Now would be a great time for a break, Your Honor.

THE COURT: What was the answer to my question?

MR. WILSON: Well, I said now would be a great time for a break, but I don't have an exact time estimate on the remainder of my questions for Mr. Seery.

THE COURT: All right. Well, we're going to stop at 5:30 tonight. I've got a very long day tomorrow so I've got to prepare for it at some point.

Nate will check the time, see how much time you've each used. But we'll take a five-minute break.

MR. WILSON: All right. Thanks, Your Honor.

THE CLERK: All rise.

(A recess ensued from 5:01 p.m. until 5:07 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're going back on the record in Highland.

All right. Nate has told me that, Mr. Wilson, you're at two hours and twenty minutes. So you're actually well within your time frame. And what did you say Mr. Morris is at, without deductions?

THE CLERK: Three hours.

THE COURT: You're at three hours, Mr. Morris, without deductions.

Here's what we'll try to do. We'll try to get through Mr. Seery today, but we're not going to do closing arguments tonight. And what I'm thinking is we're coming back Wednesday on the bond, the supersedeas bond issue with regard to the requested stay pending appeal. So we'll roll into closing arguments on Wednesday after we're finished with that matter. That matters starts at 9:30. So, presumably you'll all be here for that anyway, so we'll defer closing arguments until Wednesday.

MR. MORRIS: Your Honor?

THE COURT: Yes?

MR. MORRIS: Can we put a time limit on that, too, just to make sure it's sufficient? I don't think I'd need more than 15 or 20 minutes.

THE COURT: Okay. I think 20 minutes is plenty per side. In fact, hopefully, with this gap in time, I'll be able to kind of go through the exhibits and have my thoughts collected, so therefore that I don't I'll need a lengthy closing at that point.

Mr. Wilson, sound like a deal to you, 20 minutes?

MR. WILSON: I think 20 minutes will be sufficient, Your Honor.

THE COURT: All right. So you may proceed now with your questioning of Mr. Seery.

MR. WILSON: All right. Thank you.

CROSS-EXAMINATION, RESUMED

BY MR. WILSON:

Q When we left off, Mr. Seery, we were talking about the letters sent by K&L Gates on the 22nd and the 23rd. You would agree with me that these letters did not have any effect on the Debtor, correct?

A The lett... well, they certainly caused us to spend a lot of time and money dealing with the issues that we thought were handled at the prior hearing, where it was basically found to be frivolous. So I disagree with that.

Q You weren't intimidated by the letters, correct?

A No.

Q And the letters didn't cause you or the Debtor to refrain from operating the company in the manner that you perceived

to be in its best interest, correct?
A It did not.
Q The letters didn't cause you to change any of your trading decisions, correct?
A Nope, they did not.
Q The letters didn't cause you to change your investment strategy, correct?
A No.
Q And the letters didn't cause you to trade or not trade in a particular manner, correct?
A That's correct.
Q And you continued to function the Debtor's operations as you deemed appropriate, right?
A Yes.
Q In fact, the Debtor rejected the requests made in the letters and demanded a withdrawal, correct?
A Yes.
Q So the letters did not cause you to conduct yourself in any other manner than you would have conducted yourself had you not received the letters, correct?
A Well, as I said, we spent a lot of time and money responding to them and dealing with them because we didn't just leave them hanging out there. So that's not correct.
Q Did the letters cause the Debtor to breach any contracts?
A No.

Q And, again, every trade you initiated in December 2020 closed, correct?
A Yes.
Q But yet the Debtor considers the sending of these letters between counsel to be an interference with or impeding the Debtor's business?
A Yes.
Q So is it your contention that that provision of the TRO is clear and unambiguous?
A Yes.
Q But could you see where someone might disagree?
A No.
Q Could you see where someone might believe that a letter sent between counsel that did not cause the Debtor to alter its course in any way was not an interference with the Debtor's business?
A A threat doesn't have to be successful in order to be a threat and one that could affect us, and I said it did actually affect what we did because we had to spend money and time dealing with it.
Q Who is Scott Ellington?
A Who is Scott Ellington?
THE COURT: Okay.
THE WITNESS: He's the former general --
THE COURT: Mr. Wilson, --

THE WITNESS: -- general -- former --

THE COURT: Mr. Wilson, we all know who Scott Ellington is, okay? Please. Let's --

MR. WILSON: Oh, I'm sorry. I was just asking the question for the record.

THE WITNESS: He's the former general counsel of Highland.

BY MR. WILSON:

Q And as general counsel, did you believe that Mr. Ellington owed duties to Highland?

A Absolutely.

Q As general counsel, Mr. Ellington would have been part of the legal department at Highland, correct?

A Yes.

Q And that legal department was part of the shared services agreements between the Debtor and the Advisors, correct?

A No, it wasn't.

Q Can you tell me what you mean by that?

A It was not, meaning no. In answer to your question, it was not.

Q Are you saying that the shared services agreements between the Debtor and the Advisors did not cover legal services?

A They included legal services, yes, but you asked me if the legal department was part of it. No.

Q Can you tell me what you mean by when you hear the term legal department?

A Highland's legal department was a pretty unusual thing. It included lawyers and non-lawyers. Not just, you know, administrators, administrative assistants, and paralegals, but even some people who were accountants or MBAs. It did work all over the -- either the Highland complex or even through numbers of entities for which it didn't get paid. Dondero entities. It was a -- it was a pretty standalone odd thing, one of the most unusual I've seen. It's really unusual to have an investment firm with more people in the tax department and in the legal department than in the investing side.

Q Would you agree with me that this is a pretty broad shared services agreement, correct?

A There are a number of services that are performed under it, yes.

Q And it, in fact, says in Provision 2.02 of Exhibit 1 that, without limiting the generality of Section 2.01, and subject to 2.04, the following are the services that are going to be provided. So this -- this document wasn't intended to be limited, correct?

A I can't speak to what was intended. It's a pretty unusual document. Legal services, typically, you don't split legal services, since it's unethical to split fees, so it

wouldn't be providing attorney services. Highland often used it to, in the past, to shield things based on a claim of attorney-client privilege. But I think that that document, whether it's intended to be broad or not, is certainly ambiguous in places.

Q Did you task Mr. Ellington with the role of a go-between between the board and Mr. Dondero?

A No. This -- this settlement counsel is something I'd never heard until Dondero raised it and made it up. It -- it's wholly fictitious.

Now, what Ellington did do is he was on a number of calls with me and Dondero, and he had a communication line with Dondero. This was through the first half of the case and into -- into the summer. But as it started to become more adversarial, particularly around the mediation, he wasn't invited. So, for example, Mr. Ellington was not invited to -- to participate in the mediation. He asked. I said no.

The -- in addition, this idea that he was drafting the pot plan, well, not to my knowledge or understanding, because I drafted it for Dondero and his lawyers because you guys couldn't.

MR. WILSON: Object as nonresponsive.

THE COURT: Overruled.

BY MR. WILSON:

Q Did you send Mr. Dondero messages through Mr. Ellington?

A No.
Q So you're denying Mr. Dondero's testimony to the contrary?
A Yes.
Q Did Mr. Dondero send messages to you through Mr. Ellington?
A No. Mr. Ellington often came back and gave me messages. They were often critical of Mr. Dondero. I didn't always believe them, because I figured Mr. Ellington had an ulterior motive. But he took a number of, you know, shots at Mr. Dondero and he came back and gave his color of what he thought was going on in Mr. Dondero's mind.
MR. WILSON: Object as nonresponsive.
THE COURT: Overruled.
BY MR. WILSON:
Q Did you task Mr. Ellington with negotiating certain items with Mr. Dondero?
A No.
Q Was there not a time, in January, early January, before Mr. Ellington's termination, that you tasked him with negotiating a new shared services agreement with Mr. Dondero?
A No.
Q Did you believe that there were legitimate items that Mr. Ellington needed to discuss with Mr. Dondero?
A I'm sorry. Can you say that again? It --

Q Did you believe that there were legitimate items that Mr. Ellington needed to discuss with Mr. Dondero?

A When?

MR. MORRIS: Objection to the form of the question.

THE COURT: Sustained.

BY MR. WILSON:

Q During the year of 2020, were there legitimate items that Mr. Dondero [sic] needed to discuss with Mr. Dondero?

MR. MORRIS: Objection. Vague and ambiguous.

THE COURT: Sustained.

THE WITNESS: Well, I believe you just asked me if --

THE COURT: Sustained.

THE WITNESS: -- Mr. Dondero could discuss with Mr. Dondero. I think --

THE COURT: I --

THE WITNESS: -- the question is --

THE COURT: I sustained the objection.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: I need it to be rephrased.

BY MR. WILSON:

Q Did you ever instruct Mr. Ellington to keep taking Mr. Dondero's calls after the entry of the TRO?

A No.

Q So are you denying that on January 4, 2021, you

instructed Mr. Ellington to communicate with Mr. Dondero and negotiate a number of expense items?

A Expense items? Not to my knowledge. No, I don't recall that at all.

Q Did you ever tell Mr. Ellington that he could talk to Michael Lynn as much as he wanted because Mr. Lynn was an honorable and ethical person?

A I believe over the summer I did. Meaning summer of 2020. I don't know if I used the honorable and -- but I -- I thought Mr. Lynn, if he needed to talk to Mr. Ellington, that would be appropriate at that time.

MR. WILSON: Pull up Debtor's 17.

BY MR. WILSON:

Q This was the Debtor's Exhibit No. 17.

MR. WILSON: Go down to the bottom.

BY MR. WILSON:

Q Do you remember this email that came into evidence earlier?

A I saw it earlier, yes. I've seen it before.

Q And it starts at the bottom with a discussion between Michael Lynn and Mr. Dondero and other counsel.

MR. WILSON: Scroll up.

BY MR. WILSON:

Q Do you see where -- apparently, Mr. Lynn forwarded that email to Mr. Ellington at 8:44. We can't tell all the

senders and recipients. But do you see where Mr. Ellington responds later that evening on December 12th?

A Yes, I see the email.

Q And is it the Debtor's contention that this email between Mr. Dondero's counsel, Michael Lynn, and Scott Ellington is a violation of the TRO?

A Yeah, I think it is. I think that they're -- they're reaching out, I assume on behalf of Mr. Dondero, to try to create a witness. I assume this is for the confirmation hearing. I don't have the -- the times. But it's a pretty unusual thing to do. I know they ended up ultimately serving a subpoena on Mr. Sevilla but then not calling him.

Q Do you agree that Footnote 2 -- and we can pull it up if you want to.

MR. WILSON: Pull up 11. Debtor's 11. Bottom of Page 2. Bottom of Page 3. No, no. Bottom of the Page 4 on the document. Go to the very bottom of the footnote.

BY MR. WILSON:

Q I'm going to represent to you that this is Debtor's Exhibit 11, and this is the last page of it, and the footnote at the bottom says, "For the avoidance of doubt, this order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case."

Were you -- were you aware that that provision was in

this order?
A I'm sure I was at the time. I read it closely.
Q Would you agree with me that attempting to identify a witness for a hearing could be considered seeking judicial relief?
A No, I don't. I don't agree with you, no.
Q Are you aware that Mr. Ellington testified that while at Highland he'd been asked dozens of time by opposing counsel who they should subpoena to testify?
MR. MORRIS: Objection. I move to strike.
THE COURT: I --
MR. MORRIS: If they wanted Mr. Ellington to testify, he should have been here.
THE COURT: Yes. Actually, I couldn't even understand what the question was. Could you say what the question was again?
MR. WILSON: The question was, are you aware that Mr. Ellington testified that while at Highland he had been asked dozens of times by opposing counsel who they should subpoena to testify about a certain topic?
MR. MORRIS: Objection to the form of the question. No foundation.
THE COURT: Okay. Sustained.
THE WITNESS: I'm sorry?
THE COURT: Okay. I sustained the objection. You

don't have to answer it.

THE WITNESS: Oh, okay. I'm sorry, Your Honor.

BY MR. WILSON:

Q The Debtor's memorandum of law says that Mr. Dondero knew that several times in the last year several entities had requested the Dugaboy financial statements. Who are these several entities?

A Well, certainly, the U.C.C. I don't -- we did from Ms. Schrath, who was working for us at the time. And he instructed her, notwithstanding that she was working for Highland, to not give it over. I don't know who else had requested them.

Q Are these documents located on the Highland servers?

A I believe so. We haven't been able to find all of them yet.

Q So, have you looked for them?

A Yes.

Q How -- how many of the documents have you located?

A I don't know.

Q How do you know that there are documents that you haven't located?

A There are numbers of documents that are listed around different servers -- I don't know, I haven't done this work myself -- that indicate that they're Dugaboy. But we haven't been able to get to all of them.

Q How did Mr. Dondero personally interfere with the Debtor's search for the documents?

A I think it's pretty clear. He told a Debtor employee who worked extensively for him, who probably looked to work for him in the future, to not turn them over, notwithstanding that they're on the Debtor's server and they're the Debtor's property.

MR. WILSON: I'll object as nonresponsive.

THE WITNESS: You asked me how.

THE COURT: Overruled.

MR. WILSON: Turn to the list of -- 19.

BY MR. WILSON:

Q We're going to pull up Debtor's 19. Now, my problem with the answer you gave to the last question, Mr. Seery, is that you said that Mr. Dondero ordered that the documents not be turned over. But does the text he sent to Melissa Schrath on December 16th in fact say, No Dugaboy details without subpoena?

A That's what it says, yes.

Q So, in fact, Mr. Dondero wasn't saying that the documents couldn't be turned over, correct?

A It says, No -- No Dugaboy details without subpoena. I read that to mean don't give up anything unless ordered to do so, notwithstanding that they're on Highland's server and that make them Highland's property.

Q Well, I object to your legal conclusion.

THE COURT: Overruled.

THE WITNESS: I think it's factual, but --

MR. WILSON: Can I get a ruling, Your Honor?

THE COURT: I said overruled.

MR. WILSON: Okay. Thank you.

BY MR. WILSON:

Q But you're aware that prior to the communication that Dondero sent to Melissa Schrath on December 16th, that Douglas Draper had been communicating with Mr. Morris about producing these documents, correct?

A I'm aware of that, yes.

MR. WILSON: Let's go to our 16 real quick.

BY MR. WILSON:

Q If you look at the bottom of this, this is Debtor's -- I'm sorry -- Dondero's Exhibit 16. If you look at the bottom, do you see the email from Douglas Draper on Wednesday, December 16th, that said, Do you have a confidentiality agreement with the party requesting the information?

A I see that it says that, yes.

MR. WILSON: Can you go to 17? And can we go to Page 2?

BY MR. WILSON:

Q At the top of this -- this is Dondero Exhibit 17. The

first email on this page is from Douglas Draper on Friday, December 18th, to John Morris, that says, Would like to see them before they go out. I now need to look at the issue in light of the complaint filed (garbled).

Were you aware that Mr. Draper wanted to see the documents before they went out?

A I've -- I've seen this email, yes.

Q Do you know, as of December 16th, whether a formal request for the documents had been made to the trusts or Mr. Dondero?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: Yes, I do. They were requested by the Committee long prior. Remember that these were documents in the Debtor's possession. Mr. Draper doesn't represent the Debtor. Mr. Draper represents Dugaboy. These are the Debtor's -- this is the Debtor's information. He doesn't have a right to see anything.

BY MR. WILSON:

Q But do you know whether a formal request for the documents had been made to the trusts or Mr. Dondero at this point?

A I don't know. Certainly, to the Debtor, I know, but I don't know.

Q And the Debtor -- strike that. Do you believe it's

unreasonable for Mr. Dondero to ask that a formal request, such as a subpoena, be sent regarding the documents?

A Yes. (garbled) control of the Debtor. That -- that's totally unreasonable. He completely interfered with our employee who was required to respond to me, who specifically directed her multiple times to produce them as requested. Initially, to our own counsel. I'm entitled to see them as the CEO. Our counsel is entitled to see them. I requested it multiple times, and she didn't. She rather would be fired because she knew she was being picked up by him.

Q Is it reasonable that counsel for the trusts might want to review the documents before they're produced?

A It might be helpful, but they're not his documents. And from a --

MR. WILSON: I object again.

THE WITNESS: -- perspective, it's not reasonable. The man should be able --

MR. WILSON: Object again as nonresponsive.

THE WITNESS: I don't think it's reasonable.

THE COURT: Overruled.

MR. WILSON: All right. I'll pass the witness.

THE COURT: All right. Redirect?

MR. MORRIS: Your Honor, I'm going to spare any further examination here.

Actually, just two questions.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, was -- was Trey Parker -- withdrawn. Was Mark Okada an employee of the Debtor at the time the independent board was appointed?

A You know, he wasn't on the payroll and he didn't have any real authority. He had an office. I don't believe he actually was. I think he had left, according to Mr. Okada, actually before that. He hadn't actually just vacated. But he wasn't doing any work. He wasn't involved in the business.

Q Okay.

A He certainly wasn't on the payroll. He may have been -- he may still have been getting some kind of benefits. I don't know.

Q All right.

MR. MORRIS: Your Honor, I'm mindful of the Court's time. If I may, I'd like to just take three minutes on the exhibits so that -- so that I can rest, and I guess -- I guess Mr. Dondero will rest, too.

THE COURT: All right. All right. All right. I --

MR. MORRIS: But there's only a couple of exhibits that were objected to.

THE COURT: As a technical matter, --

MR. MORRIS: Very quickly.

THE COURT: As a technical matter, I have to ask Mr. Wilson, did you have any recross on that redirect regarding Mr. Okada?

MR. WILSON: No, Your Honor. That's --

THE COURT: All right. So, thank you, Mr. Seery. Your testimony is concluded.

All right. Now, Mr. Morris?

MR. SEERY: Thank you, Your Honor.

THE COURT: You were saying?

MR. MORRIS: Okay. So, yes, just going through the list, I believe -- and Mr. Wilson, please correct me if I miss anything here -- but I believe that they objected to Exhibits 3, 4, 5, and 6. Do I have that right?

THE COURT: That's what I show.

MR. MORRIS: Okay. The Debtor would -- will withdraw those exhibits.

THE COURT: Okay.

(Debtor's Exhibits 3 through 6 are withdrawn.)

MR. MORRIS: The Debtor will also withdraw Exhibit 16.

THE COURT: Okay.

(Debtor's Exhibit 16 is withdrawn.)

MR. MORRIS: But 17 through 22 are in evidence, right?

THE COURT: Correct.

MR. MORRIS: The Debtor will withdraw No. 23.

(Debtor's Exhibit 23 is withdrawn.)

THE COURT: Okay.

MR. MORRIS: But the Debtor does seek to admit into evidence Exhibits 29, 30, 31, and 32, in light of the testimony that we just had, because these, in fact, are the very formal requests by the Creditors' Committee for the Dugaboy financials.

THE COURT: All right.

MR. MORRIS: So we would -- we would move them into evidence for that limited purpose.

THE COURT: All right. Your response, Mr. Wilson?

MR. WILSON: My response was not contesting that the Creditors' Committee had ever sent requests to Highland. My question to Mr. Seery was whether anyone had ever sent a request to the trusts or Mr. Dondero.

MR. MORRIS: Your Honor, I still think that it's relevant to support Mr. Seery's testimony where he testified that he had asked Ms. Schrath to produce the documents on multiple occasions, and this is the reason why he did it. Here is the requests.

THE COURT: All right. I overrule the objection, and so will allow 29, 30, 31, and 32.

(Debtor's Exhibits 29, 30, 31, and 32 are received into evidence.)

MR. MORRIS: Next, Your Honor, Exhibit 35, which is the transcript from the hearing on the protective order. I'd like to offer that into evidence for the limited purpose of any admissions by Mr. Dondero's counsel that he knew and was aware that the -- that the Creditors' Committee was seeking ESI from Mr. Dondero, including text messages.

THE COURT: Okay. Mr. Wilson, your response?

MR. WILSON: I think, yeah, I think we're talking about two different issues. We're -- Mr. Morris is focusing on these events that occurred earlier in the year in 2020, and we're focusing on what Mr. Dondero himself knew in -- in the time frame that's relevant at this -- for this hearing. And not to mention, we called into question, I believe, the definition of ESI under the Debtor's own protocols and whether that would even include text messages. I don't believe that the text messages are -- you know, knowledge that the Committee was seeking those from Mr. Dondero can be imputed onto this transcript of statements by his attorneys.

THE COURT: Okay. I'll overrule the objection. I'll find that these have some relevance. So 35 will get in.

(Debtor's Exhibit 35 is received into evidence.)

MR. MORRIS: Okay. And then the last two, Your Honor, are Exhibits 38 and 39. 38 and 39 are the -- are two exhibits that were on Docket 128 that was filed last night. We had placeholders there previously. These are my firm's

time entries, bankruptcy litigation time entries related to the Dondero litigation in December, is No. 38. And No. 39 is the time entries for January of 2021.

This material was specifically requested by Mr. Dondero in discovery. We produced a form of it at that time, but it had not yet been completed at the time we produced it, and that's why we supplemented it last night. But it's directly responsive both to Mr. Dondero's discovery requests as well as the Debtor's claim for economic harm, at least partially.

THE COURT: All right. Mr. Wilson, any objection to those?

MR. WILSON: My objection to these would be that the requests -- or, I'm sorry, the statements aren't limited to -- or I assume they're not limited to what he's seeking in this hearing, because the fee statements start on November 3, 2020. And, you know, for instance, Exhibit 38 is 46 pages long of fee entries, and they seem to include every entry that Highland's made on this case, that the Pachulski's firm has made on this case, and -- and we can't tell which ones of these items that they are seeking to -- as part of their damage model.

MR. MORRIS: Your Honor, that's just not an accurate characterization of the document. The document is specifically limited to bankruptcy litigation. It's not nearly all of the fees that have been incurred in this case.

You know, to the extent that somebody disputes any particular entry, they have every right to do that. But we believe that it accurately reflects only the litigation matters that are related to Mr. Dondero's conduct. For -- for January and February.

THE COURT: Wait. December and January, you mean?

MR. MORRIS: Yes. I apologize. Thank you very much, Your Honor.

THE COURT: All right. And you're saying it relates to just this TRO matter, or are you saying it also relates maybe to the Advisor dispute as well?

MR. MORRIS: It does relate to both, Your Honor. It does, in all candor, it definitely relates to both, from this same period of time, because, you know, as Your Honor knows, the Court found that whole litigation in December of 2020 to be frivolous, and it was directly related to the letters that were subsequently written.

So, you know, they can argue otherwise, but that's our position.

THE COURT: All right. Well, Mr. Wilson, it sounds like it's perfectly acceptable to allow it to in as their evidence of some of the alleged damages, and then you're certainly able to argue on closing arguments why, you know, *x* amount would not be compensable if I were to allow damages on this front.

So it's at Docket Entry 128 from last night. 38 and 39 are admitted.

(Debtor's Exhibits 38 and 39 are received into evidence.)

THE COURT: But you also talked about earlier today a cleaned-up version of Exhibit 11, a replacement version to just clean the --

MR. MORRIS: Correct.

THE COURT: -- the heading at the top. So I assume no one has a problem with that replacement No. 11 getting in. So all three of those will be allowed.

(Debtor's Replacement Exhibit 11 is received into evidence.)

THE COURT: All right. Anything else?

MR. MORRIS: No. With that, Your Honor, the Plaintiff rests.

THE COURT: Okay. Let me be clear on a couple of these. There was an objection to your Exhibit 34 that we carried this morning. Is that not being offered? I don't show it as either withdrawn --

MR. MORRIS: I'll withdraw that exhibit as well, Your Honor.

THE COURT: Okay. So that's withdrawn. All right.

MR. MORRIS: Yeah.

(Debtor's Exhibit 34 is withdrawn.)

THE COURT: So, with that, the Debtor rests? All

right.

Mr. Wilson, I know you don't have any other witnesses. Do you have any documents that you need to clarify the record on? I admitted all of your exhibits earlier, so I presume no.

MR. MORRIS: Correct.

MR. WILSON: No, I think that that's -- I think that's all we have.

THE COURT: Okay. All right. Well, thank you. If there's nothing further in the way of a housekeeping matter, again, what we'll do is reconvene on Wednesday at 9:30. I'll start with the bond issue pertaining to the requested stay pending appeal, and then we'll allow closing arguments, 20 minutes each side, for this matter. All right?

MR. MORRIS: Thank you for your patience, Your Honor.

MR. WILSON: Thank you, Your Honor.

THE COURT: All right. And I didn't mean the thing about the basketball tournament earlier that someone wanted to get to. My team got utterly humiliated --

MR. MORRIS: We know.

THE COURT: -- Saturday night, so at this point I don't care so much. I do, but all right.

MR. MORRIS: So did Colgate.

THE COURT: Okay. Good evening.

THE CLERK: All rise.

MR. MORRIS: Good night, Your Honor.

MR. WILSON: Thanks, Judge.

(Proceedings concluded at 5:41 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 **03/24/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

RULINGS

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, March 24, 2021
	9:30 a.m. Docket
Debtor.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 20-3190-sgj**
Plaintiff,	PLAINTIFF'S MOTION FOR ORDER REQUIRING JAMES DONDERO TO SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE TRO [48]
v.	
JAMES D. DONDERO,	
Defendant.	*Continued from 03/22/2021*

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

WEBEX APPEARANCES:

For the Debtor/Plaintiff:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Debtor/Plaintiff:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For Defendant James D. Dondero:	John T. Wilson BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900

Dondero Ex. 16

APPEARANCES, cont'd.:

For Certain Advisors:	Julian Vasek MUNSCH, HARDT, KOPF & HARR 500 N. Akard Street, Suite 3800 Dallas, TX 75201-6659 (214) 855-7587
For Certain Funds:	A. Lee Hogewood, III K&L GATES, LLP 4350 Lassiter at North Hills Avenue, Suite 300 Raleigh, NC 27609 (919) 743-7306
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 the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062
Transcribed by:	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 - MARCH 24, 2021 - 9:40 A.M.

THE COURT: All right. We have Highland settings. We're going to talk about what's set and what's not set and what's requested to be set. But let's start by getting lawyer appearances. First, for the Debtor team, who will be appearing?

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

MR. POMERANTZ: Your Honor, Jeff Pomerantz is also here, to the extent necessary.

THE COURT: Okay. Thank you. All right. For Mr. Dondero, who is appearing? (Pause.) If you're appearing, I can't hear you.

MR. WILSON: Your Honor? Sorry, Your Honor. John Wilson with Bonds, Ellis, Eppich, Schafer, Jones for Mr. Dondero.

THE COURT: All right. Well, I'll see if we have people appearing for the Advisors or Funds, because we did originally have matters set involving them. Do we have counsel, Mr. Rukavina or anyone, for the Advisors?

MR. VASEK: Good morning, Your Honor. Julian Vasek for the Advisors.

THE COURT: All right. Thank you. All right. What about the Funds? Do we have Mr. Hogewood?

MR. HOGEWOOD: Good morning, Your Honor. Lee

Hogewood with K&L Gates for the Funds is on the line.

THE COURT: All right. Mr. Draper, do we have you for the Trusts?

MR. DRAPER: Yes, Your Honor. Douglas Draper on the line.

THE COURT: All right. Thank you. And for the Committee, I think I saw Mr. Clemente, correct?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matt Clemente, Sidley Austin, on behalf of the Committee.

THE COURT: All right. Thank you.

All right. Because there were some late afternoon decisions made yesterday with regard to our calendar, let me just make sure the record is clear. We originally had a follow-up hearing regarding the Motion for Stay Pending Appeal, the Motion for Stay Pending Appeal of the Confirmation Order that was filed by Mr. Dondero, the Advisors, the Funds, and the Trusts. The follow-up hearing was regarding, I guess to phrase it most clearly, whether Bankruptcy Rule 7062 and Federal Rule of Civil Procedure 62 might apply here, so that if the Appellants offered a sufficient monetary bond, supersedeas bond, I would be required to ender a mandatory stay.

There was a little bit of confusion, I guess I should say on my part maybe more than anybody else's, at the end of our hearing last Friday whether someone was suggesting that,

because there was some discussion of a monetary appeal. So I invited parties to -- in fact, the Appellants asked that I allow them an opportunity to brief that and maybe we'd have a follow-up hearing on that today. So I gave the affected parties until 3:00 p.m. Central time yesterday to submit briefs, and shortly before 3:00 p.m. the Court received a letter from the Funds and from the Advisors' counsel saying that they had concluded that there was no legally-viable path there and so they were withdrawing their request for a follow-up hearing on that.

I did get briefing from the Debtor and the Committee that was quite persuasive and convinced me that, in the context of confirmation order, you either meet the 8007 discretionary standards for a stay pending appeal and maybe add on a request for a bond if the four prongs are met or not.

So I was glad not to have a hearing. I understand the Debtor still wanted to have a hearing, thinking there might be some efficiencies in putting on a record at the bankruptcy court if the Appellants plan on next going to the district court seeking a stay pending appeal, or the Fifth Circuit. But I concluded that was not an appropriate way to go forward.

So I instructed Debtor's counsel late yesterday afternoon to submit an order, and I indicated in the email that should have been copied on all counsel what I thought that order should say to make clear for the record that the Court had

concluded, and I think all parties had concluded, that there was no possibility of a mandatory stay here pursuant to Rule 7062.

So, while our posted calendar still shows a follow-up hearing on the stay pending appeal issue, I have cancelled that.

So what we are here on today, what we're definitely here on today is scheduled closing arguments on the motion that the Debtor had filed several weeks ago, a couple months ago, asking this Court to hold Mr. Dondero in contempt of court for allegedly violating a TRO that the Court issued December 10th, 2020. I had allotted twenty minutes per side when we came back this morning for closing arguments on that contempt matter.

Now I see at 9:01 this morning -- news flash for anyone who didn't check their docket this morning within the last half hour or so -- Mr. Dondero's counsel has filed a Motion to Reopen Evidence to Allow for Additional Rebuttal Witness Testimony, and this pertains to what I'll call the cell phone issue that Mr. Dondero and Mr. Seery had inconsistent testimony on.

So, I'll ask, has the Debtor seen this motion? Again, it was filed at 9:01 this morning. Are you aware, I'll ask Mr. Morris, are you aware of the motion?

MR. MORRIS: Your Honor, John Morris; Pachulski,

Stang, Ziehl & Jones. I am aware of the motion. I read it briefly, and I've got argument and commentary to the extent the Court wants to hear anything.

THE COURT: All right. Well, --

MR. MORRIS: I'm prepared to proceed. The fact of the matter is, Your Honor, this is a motion. It's not on an emergency basis. It should be heard on regular notice.

What I would say, having read it, Your Honor, is that I give Mr. Dondero and his law firm 24 hours to withdraw it or we will be filing a motion under Rule 11 for sanctions. It is frivolous. This motion has been pending -- the motion for contempt has been pending since January 7th, more than two months ago. The issue of the cell phone has been front and center. So concerned were they about the cell phone that they actually made a motion to try to exclude it from evidence. Your Honor has made very specific comments about the cell phone. There is nothing here that would allow them in good faith to make this motion. They've got 24 hours to withdraw it or we will be seeking sanctions.

They seek to introduce testimony from Jason Rothstein? Jason Rothstein, as Mr. Dondero testified yesterday under oath, was under subpoena. He was on their witness list. Why they chose not to call him I'll leave for them to explain. Mr. Ellington was in the courtroom on Monday. He was their witness. They released him. And now they want to put in his

evidence?

They ended the proceedings on Monday and they rested. They made no reservation of rights. They did nothing of the kind. This motion is not made in good faith, and we will seek sanctions if it's not withdrawn in 24 hours.

THE COURT: All right. Well, Mr. Wilson, tell me about the filing of this motion. I'll let you know, by the way, you may think I'm being very technical, but one of the first things I do whenever I get a motion, especially when it's kind of emergency, short-notice in nature, is I go see if you have the required certificate of conference that our Local Rules require. And that always makes me grimace when I don't see that, because, you know, I know there are some contexts in a complex Chapter 11 case where you obviously can't have a conference with every affected party, but certainly in this one you could have had that conference.

So, anyway, but let's talk about the motion beyond just that technical point. What would you like to say, Mr. Wilson?

MR. WILSON: Well, Your Honor, Mr. Morris is correct that Mr. Rothstein and Mr. Ellington were on our witness list, although we did amend our witness to omit Mr. Rothstein prior to the time that this matter was heard yesterday.

The real substance of it is, is that Mr. Rothstein and Mr. Ellington's testimony, in our estimation, would have just been cumulative of other testimony in this proceeding. And because

Mr. Morris had, you know, released Mr. Ellington yesterday and said he would not be calling him -- or not yesterday, but Monday, I'm sorry -- we ended up thinking it through over the course of the hearing and determining that, you know, his testimony would just merely be cumulative of testimony that Mr. Dondero would offer and that we suspected that Mr. Seery would confirm.

However, we were greatly surprised by some of Mr. Seery's testimony, including his statements made about Mr. Rothstein and also statements regarding Mr. Ellington, stuff that directly contradicts what was in Mr. Ellington's deposition testimony and what we learned from our client, Mr. Dondero, and that he testified to yesterday.

So we ended up releasing Mr. Ellington prior to the testimony of Mr. Seery, and at such time that Mr. Seery made the statements, he was no longer under the Court's control to call as a witness, and that's why we had to work hurriedly to put this motion together. We had to go through Mr. Rothstein's counsel to get the declaration we got. We were finally able to get that early this morning. You know, I apologize if there's no certificate of conference. That was merely an oversight in a rush to get this filed.

So, you know, my other thought is that I'm not sure that we officially rested our evidence yesterday. But in any event, I understand the Court may --

THE COURT: Okay. Stop right there. You did. The whole discussion was we'll come back for closing arguments Wednesday. I mean, there's no way you could have been mistaken about that.

MR. WILSON: I understand that, Your Honor. And I'm not trying to -- I'm not trying to argue the point. My next statement was going to be that I, you know, I suspect the Court considers that we did. So I would say, if it is to be treated as a motion to reopen the evidence, I mean, there actually is case law on that from the Fifth Circuit. And there's a relevant case, *Garcia v. Woman's Hospital*, 97 F.3d 810, from 1996, and that case says that among the factors the trial court should examine in deciding whether to allow reopening are the importance and probative value of the evidence, the reason for the moving party's failure to introduce the evidence earlier, and the possibility of prejudice to the nonmoving party. And we think that analysis of those factors supports allowing this testimony from Mr. Ellington and Mr. Rothstein, and potentially Mr. Surgent, to rebut specific testimony given by Mr. Seery that we did not anticipate --

THE COURT: Okay. Let me stop --

MR. WILSON: -- that he would give.

THE COURT: Let me stop you right there. Those are broad principles, and every situation is going to be fact-

specific as far as reopening evidence. But you've more than once used the word rebuttal. You used it in the title of the pleading you filed at 9:01 this morning, and you've used it in oral argument. Mr. Seery was in the case in chief of the Movants, the Debtor. Okay? Then you all had your chance to put in your responsive evidence. Why are you calling it rebuttal? Rebuttal is --

MR. WILSON: Well, --

THE COURT: -- is if the Debtor then came along and said, you know, hey, I didn't have this person on my witness list but their witness said something completely different than what he said in discovery and I think, you know, I need rebuttal evidence, not just impeaching him or whatever with a prior depo. I mean, that's a -- there are other examples I could give, but my point is, this isn't rebuttal. This would have been your defensive evidence to the motion, okay? Rebuttal has a more, I don't know, sympathetic, equitable ring to it, like something came out you just had no way of anticipating. Okay? And so now, beyond everyone's case in chief and defensive case, we need something to shed new light.

That's not what we're talking about. You had every reason to know, if you chose to do a deposition of Mr. Seery -- which I'm guessing you did, but I don't know -- to know what he might say. And then he was in their case in chief, so you had your chance to put in a defensive witness at that point.

I have no idea why you decided, eh, we don't need Ellington, eh, we don't need Rothstein. We named them on our witness list. You know, there was a subpoena, I guess, it sounds like, of Rothstein. But correct me if you think I'm viewing this too harshly. It just seems like a litigation strategy that came back to haunt you.

MR. WILSON: Well, I would -- I would disagree with that, Your Honor. I mean, I -- the rebuttal term may be an imprecise moniker for this particular motion, but in essence that's exactly what it is. I mean, we were -- we were greatly surprised by the way Mr. Seery testified and we did not have another witness that was in court at the time to come on and to --

THE COURT: Because of your own --

MR. WILSON: -- counter it.

THE COURT: Because of your own litigation strategy to release them. No one forced you to do that. No one forced you to do that.

MR. WILSON: That may be true, Your Honor. Decisions were made. I've explained, you know, why decisions were made. And -- because I think we do have a couple options here. As I suggested in my motion, I don't believe a continuance is necessary to the extent that we can bring in Mr. Ellington's testimony by deposition. And secondly, if --

THE COURT: They don't agree to that. They don't

agree to that. They don't agree to this --

MR. WILSON: Well, I understand that.

THE COURT: -- entire motion, but I guarantee you, if I said I'm granting the motion, they're not going to agree to a declaration or deposition testimony. I'm sure they would want to cross-examine them. I mean, Mr. Morris, am I making a wrong assumption here?

MR. MORRIS: Your Honor, a couple -- just a couple of things. First of all, they actually never did take Mr. Seery's deposition in connection with the TRO enforcement contempt proceedings. They didn't even do that. Number two, I was specifically asked by Mr. Ellington's counsel at a break yesterday whether I would consent to the entry of Mr. Ellington's deposition transcript, and I categorically said no. I'm not going to call him, but if Mr. Dondero calls him, I'm going to cross-examine him live. And they knew that. And then they had the choice. They had the choice, Your Honor, to call him live or to not call him, and they chose not to call him.

And not only did they rest, if this -- if Mr. Seery's testimony was so stunning, if they were so surprised by the testimony, how come nobody said anything on Monday? How come they let the Court close the evidence? How come they didn't reserve the right? How come they didn't say, We'd like the opportunity to put on a rebuttal case because we just heard

something we didn't anticipate?

They did none of that, Your Honor. This is frivolous, and if it's not withdrawn in 24 hours we will move for sanctions.

THE COURT: All right. Well, Mr. Wilson, anything else you want to urge that you think I'm not hearing, missing here?

MR. WILSON: Well, Your Honor, I think I've explained, you know, our reasons for why we filed this motion. I would say that, in -- that --

THE COURT: And by the way -- I'm sorry to interrupt you again -- but I'm not clear even what you think you heard from Mr. Seery that you think is so surprising it made your team conclude we've got to call -- you say rebuttal evidence -- we've got to call Ellington or Rothstein. What even was it?

MR. WILSON: Well, there were -- there were a few things, Your Honor. I mean, as with respect to Mr. Rothstein, the issue was the written or unwritten -- and I believe the testimony was there was an unwritten policy of how cell phones were disposed of. There was testimony from Mr. Seery, although I believe it was speculation on his part, that the -- that Mr. Dondero actually instructed Mr. Rothstein to do something different in this instance when he submitted his cell phone for replacement. Mr. Rothstein, as shown in his affidavit, would say that --

THE COURT: Okay. Stop.

MR. WILSON: -- you know, he's been --

THE COURT: Stop right now. I feel like you're about to try to get in front of me evidence that you chose not to try to get in front of me Monday. I asked, what did Mr. Seery say in testimony Monday that you think warrants a reopening of evidence? I really, I get it that it's about a cell phone and company policy, but what specifically did he say, --

MR. WILSON: Well, the specific --

THE COURT: -- Seery say?

MR. WILSON: Right. And I gave one instance. But the specific testimony was that Mr. Seery accused Mr. Dondero of making up his testimony regarding the fact that there was ever a cell phone policy, number one. And number two, that Mr. Dondero persuaded Mr. Rothstein to do something improper that was out of the ordinary course with respect to the replacement of his cell phone.

THE COURT: All right. Well, again, if you had deposed Mr. Seery, or even just listening to him, you would have known at the conclusion of that. I mean, you could have cross-examined him and then decided did you need to call Rothstein or Ellington.

I just, it's not like you are articulating unfair surprise. You had every reason to know the theory of the case was he exercised control over property of the estate, *i.e.*,

the phone, in a way that violated the automatic stay. And I guess if you looked at their witness list you knew that the employee handbook and its policy stated therein might be a focus of their evidence. I mean, I'm just not getting what the unfair surprise is here, if that's one of the ways I should look at this.

MR. WILSON: Well, Your Honor, it's true that we did not depose Mr. Seery, but to be honest, we did not believe it was necessary at the time. We had no indication, no idea that he would have a completely different testimony on this from the employees who'd worked at Highland for, you know, many, many years. And we had -- we'd heard from three people, including Mr. Ellington, who confirms that testimony, and that's why we let Mr. Rothstein go.

With respect to Mr. Ellington, the issue runs deeper. It's not only --

THE COURT: I am not --

MR. WILSON: -- his testimony --

THE COURT: -- asking -- I'm not going to allow you to get in evidence before me. I'm really just trying to give you every opportunity to articulate why Seery said something that was an unfair surprise or you think somehow rises to the level where I should reopen the evidence. And I'm just, I'm not hearing --

MR. WILSON: Well, that's --

THE COURT: -- either an unfair surprise or some other reason. And I'm just trying to give you every opportunity to convince me if you think I'm missing something.

MR. WILSON: Well, I appreciate it, Your Honor. I was trying to get to a second point without trying to improperly admit evidence at this stage. But with respect to Mr. Ellington, he -- I did depose Mr. Ellington and got the pages of deposition testimony that I submitted with that motion. Among those pages, there were -- there were statements that contradicted Mr. Seery's testimony yesterday that he did not use Mr. Ellington as a go-between between Mr. Seery and Mr. Dondero. And Mr. Ellington's testimony directly conflicts with what Mr. Seery offered yesterday.

MR. MORRIS: Your Honor, if I might just --

THE COURT: All I can say is you should not have released him. I'm just baffled. I am baffled. I was baffled when it happened Monday, and now I'm baffled that you would argue, I guess, we rethought it after we left and we really wished we would have called him. I mean, that's not grounds to reopen the evidence. All right? So your motion is denied.

MR. WILSON: All right. Thank you, Your Honor. I'd like to make an offer of proof of the Rothstein declaration as well as the Ellington deposition testimony that I've submitted.

MR. MORRIS: We object, Your Honor. The motion was

just denied. There is no basis to offer proof in a record that's been closed.

THE COURT: All right. I'm not getting your procedural request. It's one thing if I deny the admissibility of evidence during a trial. Obviously, then a smart lawyer asks to make an offer of proof so a higher court can decide if that was error in not considering the evidence. But this different. Right, Mr. Wilson?

MR. WILSON: Well, I don't know that it's that different. But I think for purposes of review, I want to make a complete record, and I would offer the evidence as an offer of proof.

THE COURT: Well, didn't you say you attached to the motion -- I didn't look at the attachments -- the substance of the evidence you want to --

MR. WILSON: Yes. Both of the --

THE COURT: -- the substance of the evidence you want to get in?

MR. WILSON: That's true, Your Honor. It's in the attachments to our motion.

THE COURT: All right. Well, then it's there in the record if you want to appeal my denial of your motion to reopen evidence, okay?

All right. Well, let's hear closing arguments, then.

Mr. Morris, as you all will recall, I've limited you to

twenty minutes each, so I'm ready to hear your argument.

MR. MORRIS: Before we go on the clock, Your Honor, just one housekeeping matter.

THE COURT: Okay.

MR. MORRIS: Filed at Docket No. 130 is a list of the exhibits that were admitted into evidence. And because I have some feeling that there might be an appeal, I'd like to make sure that that's accurate, and there are several items that need to be corrected.

THE COURT: Okay. Let me pull this up. Where is the adversary? Here it is. Okay. So you're looking at what the --

MR. MORRIS: I think it's Exhibit -- I think it's Docket No. 130, is the list of exhibits.

THE COURT: Okay. I have it in front of me. You're saying it's inconsistent with what you thought was --

MR. MORRIS: Yeah. There are -- there are three errors, Your Honor.

THE COURT: Okay. I'm trying to -- I don't think I have in here with me my notes on the exhibits because I didn't anticipate this. They must be back in chambers, or maybe -- all right. Well, let's just let you present what you think is missing, and --

MR. MORRIS: Thank you, Your Honor.

THE COURT: Okay. Go ahead.

MR. MORRIS: First is actually -- first is actually an item that we had on our exhibit list that I agreed to withdraw, so it's actually, it's an exhibit against the Debtor.

THE COURT: Okay.

MR. MORRIS: And that's Exhibit No. 3. We had agreed to withdraw that exhibit from evidence, so it should not be on the list.

THE COURT: Okay. So we'll revise that to show No. 3 was withdrawn. Okay.

MR. MORRIS: Correct.

(Debtor's Exhibit 3 is withdrawn.)

MR. MORRIS: But Exhibits 35 and 36, which are the transcripts from the oral argument on the Committee's Motion for a Protective Order, and Exhibit 36, which is the transcript from the preliminary injunction hearing on January 8th, both of those transcript were admitted into evidence. And we would respectfully request that the Court amend the list to exclude Exhibit 3 and to add Exhibits 35 and 36.

THE COURT: Okay. Tell me again what the 35 transcript was. What hearing?

MR. MORRIS: That's the July 21, 2020 hearing on the discovery motions where the issue was the Committee's request for, among other things, ESI, including text messages from nine custodians, including Mr. Dondero.

THE COURT: All right. Mr. Wilson, do you have any contradictory view of that? I can go back in my chambers and get my own list if I need to. I definitely remember the preliminary injunction transcript coming in. I just couldn't remember for certain the July one. Do you have any contrary view?

MR. WILSON: I think that that's true. Was Exhibit 37 admitted?

MR. MORRIS: Yes, and it's on the list.

THE COURT: It's on the list.

MR. WILSON: That was my question. So 35, 36, and 37 are all admitted and in evidence?

THE COURT: Well, he is pointing out, Mr. Wilson, that the official record of the Court does not show 35 and 36, and he's saying that is a mistake. And I'm just asking, do you agree that they were admitted? Otherwise, we can go back and listen to the audio and I can pull my notes from chambers. But --

MR. WILSON: Well, I'm being told by my co-counsel that Your Honor admitted 35 and 36 yesterday.

THE COURT: Okay. Very good. So we will correct the official record here to show 35 and 36 are part of the evidence and No. 3 is not.

All right. Any other housekeeping matters?

MR. MORRIS: No, Your Honor. I'm ready to proceed if

Your Honor is.

THE COURT: Okay. I am ready. And it's 10:12. I have no problem if you save some of your twenty minutes for rebuttal. And if I stop either one of you and ask questions, Nate, you'll stop counting the time.

All right. You may proceed.

MR. MORRIS: That's my intention.

CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

MR. MORRIS: Good morning, Your Honor. John Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

Your Honor, as you'll recall, in the face of explicit threats to Mr. Seery and Mr. Surgent, as well as the brash interference with the Debtor's operations a few weeks after the board asked for Mr. Dondero's resignation, the Debtor sought and obtained a TRO against Mr. Dondero. Mr. Dondero has questioned the Debtor's motivation in seeking the TRO, but the motivation could not be clearer. Leave the Debtor alone. Unless he's in the courtroom, unless he's on the phone with lawyers or communicating with lawyers or is communicating with shared services, leave the Debtor alone. That's what the TRO was about, and that's exactly what it says.

But Mr. Dondero cannot help himself. Whether because he wants to burn the house down or he just cannot listen to authority, Mr. Dondero refuses to leave the Debtor alone.

The Debtor has proven by clear and convincing evidence

that in the few short weeks between the time the TRO was issued and the time it was converted to a preliminary injunction, he violated the TRO at least 18 separate times. Section 2(c) of the TRO says clearly and unambiguously, do not communicate with the Debtor's employees unless it's about shared services. It could not be any clearer. It was -- that was the only exception, shared services.

Can we put Slide 2 from the opening dep up on the screen?

Mr. Dondero -- while we wait for that, I'll continue. Mr. Dondero did offer into evidence two shared services agreements. We didn't dispute that shared services agreements existed. That's why there's an exception in the TRO for that. But while Mr. Wilson went through some of the communications that are at issue with Mr. Seery, it's interesting that he did not put one of these 13 communications in front of his client to try to show how any of the communications connected to shared services. And the reason he didn't do that, Your Honor, is because he can't. Every one of these communications is adverse to the Debtor's interests. Mr. Seery testified that he did not know of or authorize any of these communications, and that if he had known, he would have fired the employees on the spot.

And I ask Your Honor to put yourself in Mr. Seery's chair. If you were the CEO of the Debtor and you learned that your employees were engaged in these kinds of communications, what

would you have thought, what would you have done? These are not technical violations. They are not foot faults. Every one of these communications is adverse to the Debtor.

Look at the topics. Getting a witness to testify against the -- to testify on Mr. Dondero's behalf at a hearing against the Debtor. Discussions concerning the entry into a common interest agreement between certain of the Debtor's employees, Mr. Dondero, and other entities owned or controlled by him. Challenging the Debtor's decision to enter into the settlement agreements with Acis and HarbourVest.

And by the way, there's no problem with Mr. Dondero challenging those. The problem is when he brings the Debtor's employees, and in this case, Mr. Ellington, into those discussions.

He directed an employee not to produce documents that were in the Debtor's possession, custody, and control. He engaged in numerous communications between December 22nd and December 24th with Mr. Ellington concerning K&L Gates, the Advisors, the interference with the trading, the letters that were sent. Mr. Ellington's name was all over that.

This is wrong. And Mr. Dondero knows it. How do we know that he knows it was wrong? Because of one singular statement that he made that wasn't even in response to a question that I asked. If you recall, Your Honor, as I was putting these documents up on the screen, there were privileged

communications between Mr. Dondero and his lawyers, and at one point Mr. Dondero said -- and I can't quote because I don't have the transcript -- what are my privileged communications doing up on the screen? They were up on the screen because Mr. Dondero chose to forward them to the Debtor's general counsel.

We are going to deal with the consequences of that for a long time. It is a plain and blatant breach of the attorney-client privilege. It is on a number of topics. It is expensive. The ramifications will be felt for a long time in this case.

But the important point here, Your Honor, is consciousness of guilt. Mr. Dondero's statement of surprise that his communications could be shared with Mr. Ellington but would otherwise have been shielded from the rest of the world both completely destroys any argument, and there was no credible argument to begin with, that he was engaged in shared services, because if it were shared services, he would have no problem with the Debtor seeing the documents, he would have no problem with the Debtor seeing the communications that he voluntarily and knowingly shared with Debtor's general counsel.

But what it really shows is that he never thought these communications would see the light of day. The Court should hear Mr. Dondero's surprise for exactly what it is, an

admission of guilt.

Mr. Dondero wasn't shown any of these 13 communications. He offers no testimony as to how to connect any of them to shared services. And the explanations that he provided have no credibility and are completely undermined by the documents.

I'm just going to take a couple of examples. Exhibit 19 is the text message that he sent to Ms. Schroth: No Dugaboy details without the subpoena. Clearly, it's a violation of the TRO. Ms. Schroth was an employee of the Debtor. It can't have anything to do with shared services because the unrebutted testimony was that Dugaboy was not party to a shared services agreement. But it was -- his explanation is that the lawyers told him to do it.

Think about the credibility. Your Honor really should make some credibility findings here. Think about the credibility of blaming the lawyers. A lawyer who six days earlier heard a court enter a TRO against his client preventing him from speaking to the Debtor's employees except for shared services instructed his client to speak to the Debtor's employees about something other than shared services? Does that make any sense at all? Bonds Ellis is not that bad. They -- they -- I mean, they're good lawyers. They're good lawyers. I don't meant to demean them at all. I'm sure that they had no idea that this was happening. There is no way that somebody at Bonds Ellis -- and I specifically didn't ask

Mr. Dondero to identify the lawyer who told him that, because that wouldn't have been fair -- but somebody from Bonds Ellis, six days after the TRO is entered, instructs Jim Dondero to communicate with the Debtor's employee about something other than shared services? It makes no sense.

You know how I also know it makes no sense? Because Mr. Dondero put into evidence at Exhibits 16 through 20 a string of emails between and among me and Mr. Draper and Mr. Leventon concerning the Dugaboy financials. Mr. Draper was the lawyer for Dugaboy, and he and I are going back and forth about the documents, and he wants to know if I have them. And as Mr. Dondero did testify, Mr. Draper wanted to see them and I told him, I'll give you a copy when I get them, but they're in the Debtor's subject -- custody and control. You can see it. It's at Exhibit 20. I told that to Mr. Draper. I'll give you a copy, but I've got to get them and I've got to produce them.

None of us knew, right, and it's reflected in those exhibits, nobody ever says you need a subpoena. Mr. Draper never says they're not the Debtor's documents. He never seeks to exercise control of the documents. This is the lawyer for Dugaboy, with no knowledge that Mr. Dondero has instructed the one person at the Debtor who knows where the documents are not to produce them. And nobody knows that.

It's not right, Your Honor. This stuff is not right. So there you have 13 different instances where Mr. Dondero is

communicating with the Debtor's employees in ways that are adverse to the Debtor that have nothing to do with shared services.

Next, 362(a). Again, the TRO at Section 2(e) could not be clearer. There's nothing ambiguous. It's not overbroad. It simply says, don't violate the automatic stay.

362(a)(3), as we talked about the other day, prevents anyone from trying to exercise control over property of the Debtor. Mr. Dondero violated this at least three separate ways. The phone twice, because the phone, as he admitted, was the Debtor's property, and as the employee handbook of his baby showed, the text messages were the Debtor's property. I know on cross-examination or direct Mr. Wilson had him point to a line that says the Debtor's obligations or the employee's obligations, you know, maybe they terminate upon the end of the employment. The statement about the text messages being the Debtor's property, that's not an obligation of the employee. That's not an obligation at all. It's completely irrelevant.

The important point is that Mr. Dondero knew that the text messages were the property of the Debtor. And how do we know that? Because not once, but twice, in 2020 he executed certifications where he acknowledged that, and those can be found at Exhibits 56 and 57. Your Honor will recall, as part of the corporate governance settlement, Mr. Dondero agreed

that the Committee would do an investigation on related-party claims. Related-party claims included an investigation of Mr. Dondero. Mr. Dondero knew since no later than January 9, 2020 that he was under investigation.

If that were not enough, we had the motion practice last summer and the Committee said, I want the documents and I want the ESI and I want the text messages of nine custodians. We know that Mr. Dondero knew that. How do we know? Because he filed a pleading in this Court that said so. He said specifically at Paragraph 3 of his response to the Committee's motion, I know the Committee wants my ESI. I know the Committee wants my text messages. And yet there we were, in December, after he's fired, he changes out the phone, the text messages are gone, and we know the phone existed, we know the phone existed after the TRO was entered into.

And let's think about -- so, you know, again, not clear and convincing evidence, Your Honor. Beyond reasonable doubt. It's beyond reasonable doubt that he knew the text messages were the company's property. It's beyond reasonable doubt that he knew the company -- that he was under investigation. It's beyond reasonable doubt that he knew the U.C.C. wanted the text messages. And it's beyond reasonable doubt that the phone existed after the TRO was entered into. Beyond reasonable doubt. No dispute.

Let's look at some of his excuses as to why none of this

really matters. Again, you know, I'll just repeat, he refers to Rothstein and Surgent and Ellington. Again, Rothstein was under subpoena. He didn't call him here. Ellington was in the courtroom yesterday, or on Monday. He didn't sign -- he didn't sign -- where are the people corroborating his story? He had them here and he chose not to put them on.

There's no corroboration in any documents. A 50-page employee handbook that does say text messages are the Debtor's property, does not say anything that corroborates anything that Mr. Dondero said.

There's no communication. There no email. There's no document. There's nothing to corroborate what he said at all.

He says, oh, but there's no litigation hold letter. I have to tell you, Your Honor, I'm a little -- it's -- I don't know what to say when he just keeps trying to blame others. Litigation hold letters -- and this is argument, so I'm going to say what my view is -- litigation hold letters are used to put somebody who might not otherwise be on notice that claims might be asserted against them. You don't send a litigation hold letter to somebody who has agreed to submit to an investigation. You don't send a litigation hold letter to somebody who has acknowledged to a court that they know their text messages are being sought in the context of litigation. It's just, it's just ridiculous, Your Honor. It really is just ridiculous. As my kids would say, give me a break.

In the end, the evidence clearly and convincingly showed that Mr. Dondero controlled the Debtor's property, and in violation of TRO Section 2(e) he controlled it, he discarded it when he knew investigation was underway and when he knew the text messages were at issue.

The third part is trespass. I won't spend a lot of time on it, Your Honor. But, you know, it doesn't matter that he didn't trespass before the TRO was entered. What matters is that on January -- on December 23rd, in the letter, the Debtor told Mr. Dondero that it was going to exercise control over its property. And they told him, don't enter our premises after December 30th or we will consider it a trespass. The Debtor has every right to do that. So Mr. Dondero walking in on January 5th is a violation of the TRO.

Interference with trading. Mr. Dondero, his admission of interference with the trading is clear. It's unambiguous. The Debtor told his lawyers in that December 23rd letter that one of the very reasons they were evicting him was because of his interference with the trading and his interference with the Debtor's operations, and they never, ever rebut that. His lawyers never contest that. They never respond to it. They just let it go.

And so all you have now is Mr. Dondero backpedaling, you have the failure of his lawyers to respond, and you have his plain unambiguous admission, really, with the words December

22nd in my question from the earlier trial.

Your Honor can make whatever credibility findings the Court thinks is appropriate, but that's the evidence that exists, his backpedaling from clear and unambiguous admissions.

We can take down the slide.

I did want to point out just one more thing on the phone, right. The -- he thinks all of these people are going to corroborate what he has to say. You know who actually spoke on the topic and who didn't corroborate a single thing that he said was he lawyers. Because if you remember that one-paragraph letter, Your Honor, where his lawyers actually responded to the Debtor's demand for the cell phone -- let me see if I can find the exhibit number for you. I don't have it handy. But it's the one-page letter from Bonds Ellis where they respond on the issue of the cell phone, and they don't say anything that Mr. Dondero testified to. They don't say that Mr. Seery told them all to swap out their phones. They don't tell the Debtor that there's a longstanding company practice or policy that allows people to switch phones. They don't say anything. All they say is, we can't find it. They do admit that it's the company's phone, though. They do make that admission in their letter. So I just wanted to make that clear.

You know, they want to bring those guys in, Rothstein or

Surgent or Ellington. What about their lawyers? Just think about what their lawyers said contemporaneously in response to the Debtors' demand for the cell phone. They say nothing other than it is the Debtor's cell phone and we can't find it.

Let's just talk quickly about damages, Your Honor, and an appropriate sanction. It's very difficult to quantify. We've put in time records. I know people can have different views of what should and should not be included. I know there's a lot of stuff in there that's not included that probably should be. We don't have any evidence of the costs that the Debtor has borne as a result of these violations from FTI or Sidley or DSI. Kasowitz Benson was hired to analyze some of the issues my firm admittedly is not an expert on. So there's a lot of other expenses.

There's -- Mr. Seery testified extensively, and it's not contradicted, it's not rebutted at all, that there's noneconomic harm here, that his authority was undermined. You know, one could say the communications about a common interest agreement, how can you quantify the harm of knowing that your employees are engaged in discussions about entering into a common interest agreement with your adversary? How can you quantify that harm?

So I don't think that we have a burden, frankly, of proving to the dollar of the harm that the Debtor suffered, but it has suffered immensely. And it's suffered both

economically and non-economically. And we respectfully request that the Court enter a sanction for the violation of the TRO.

I think, Your Honor, I'm at eighteen minutes, and I'm going to save my last two minutes for rebuttal.

THE COURT: Okay. Thank you. Mr. Wilson?

MR. WILSON: Yes, Your Honor. May it please the Court.

THE COURT: Yes.

CLOSING ARGUMENT ON BEHALF OF JAMES D. DONDERO

MR. WILSON: A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order. To hold a party in civil contempt, the court must find such a violation by clear and convincing evidence. And I cited you a similar passage from a case yesterday from the Fifth Circuit. That passage is from *Waste Management of Washington v. Kattler*, 776 F.3d 336. That's a case that I believe is in our briefing, but I'd like to highlight that in that case the Fifth Circuit was considering a contempt order issued by a district court, and the district court had issued a TRO enjoining a guy named Mr. Moore from disclosing confidential information and requiring Moore to produce images of electronic devices containing the confidential information.

The district court held Mr. Moore in contempt for failing to produce an iPad, and the Fifth Circuit reversed that contempt finding, holding, however, no contempt liability may attach if a party does not violate a definite and specific order of the court.

After the district judge determined that the iPad was a personal device that should have been produced to WM on December 22nd, Moore stated, If you want that device turned over directly to Waste Management, we'll do it tomorrow. The court responded, I think that's what the order said. The court was mistaken. The order required Kattler to produce an image of the device only, not the device itself. Several days later, after WM determined the image did not contain the relevant information, WM moved to hold Kattler in contempt because he had failed to produce the device itself in accordance with the court's alleged order from the bench. But Moore was under the understandable impression that the only order in place was to produce an image of the device. Therefore, given the degree of confusion surrounding whether the district court ordered production of the physical device, we conclude that Moore did not violate a definite and specific order of the court.

So with respect of each of charges of contempt that the Debtor makes here, Your Honor, you must determine whether the Debtor has met its burden by clear and convincing evidence

that Mr. Dondero violated a definite and specific order of the Court. I submit to you that the Debtor has failed to meet that burden.

With respect to the first charge of willful ignorance of the TRO, it's important to note that willful ignorance of a TRO is not a violation of a definite and specific order of the Court.

But equally important, I would point to you that the allegation simply isn't true. You heard testimony from Mr. Dondero that he was aware of why the TRO was entered. He discussed the order with his counsel. He became aware of what he could and couldn't do through those discussions. Mr. Dondero testified that he respected the Court's order. He took it seriously. He followed up with his counsel over the next few weeks, seeking advice regarding whether certain actions may or may not violate that order. And it was important to him. He made a conscious effort to modify his behavior after the TRO. He told you that yesterday. Or, I'm sorry, on Monday.

Moreover, Mr. Dondero testified that he did not believe that any action that he took would violate the TRO. And in fact, you heard Mr. Seery testify on Monday that he did not believe that Mr. Dondero was, in fact, ignorant of the TRO, in contradiction to what his papers would say.

Number two, the second charge that Mr. Dondero is alleged

to have violated is by throwing away his cell phone. Again, this is not a clear violation of any definite and specific order of the Court. Mr. Dondero did not have any reason to believe that getting a new phone would violate the TRO. Mr. Dondero testified that he changed over the financial responsibility for his phone and got a new device because he was made aware that the Debtor would be terminating all employees and discontinue paying for their cell phone plans. In fact, Mr. Dondero decided to get a new cell phone and initiated the process two weeks before the TRO had been entered.

Moreover, the evidence shows that when Mr. Dondero got a new phone, he simply followed the procedure that Highland had always required its employees to follow. In fact, the wiping of the cell phone was performed by the Debtor's own employee, Jason Rothstein, the head of IT.

And finally, Mr. Dondero did not personally throw away or destroy his phone. He turned it over to the Debtor and he never saw it again.

And I remind you, he turned it over to the Debtor well before the entry of the TRO, up to two weeks. The Debtor was, of course, free at that point, when they had possession of the phone, to preserve any information on the phone that they deemed appropriate. They apparently chose not to do so. Mr. Dondero testified that he assumed that the phone had been

destroyed in compliance with Highland's policies and procedures, but the evidence shows that the last he heard about his phone, it was actually in the Highland offices.

And finally, the Debtor's request for the phone did not come until nearly two weeks after the entry of the TRO and two weeks after Mr. Dondero had received his replacement cell phone, up to four weeks since Mr. Dondero had actually seen his cell phone.

But, however, we were surprised by Mr. Seery's testimony on Monday that accused Mr. Dondero of making up his testimony about the cell phone policy. And in fact, despite testifying that Mr. Rothstein was honest and ethical, Mr. Seery attempted to slander Mr. Rothstein by claiming that he did something nefarious at Mr. Dondero's instruction. Of course, there was no direct evidence of any nefarious conduct on Mr. Rothstein's part.

But in any event, Mr. Dondero's actions in replacing the cell phone, which actually occurred two weeks before the TRO, cannot violate the TRO itself. And there's two very specific reasons for that. Number one, it's not in the time frame. The evidence was that Mr. Dondero has not seen his cell phone since the TRO has been entered.

Second, that provision of -- to enforce that order -- oh, I'm sorry -- to enforce that action against Mr. Dondero does not violate any clear and specific provision in the TRO. The

TRO does not order Mr. Dondero not to replace his cell phone or destroy the old one, even if he did. And it -- in any event, the Debtor has tried to tie it into 362 and its letter that it sent on December 23rd. Both of those documents are documents outside of the TRO itself and cannot be considered to be a part of the TRO for enforcement purposes because that would violate Rule 65(d).

Now, finally, the Debtor, on this point, the Debtor wants a spoliation instruction against Mr. Dondero, apparently. But the spoliation instruction is confusing to us, Your Honor, because in the context of the Debtor's request, the Debtor would actually be seeking a spoliation instruction against itself as it relates to the litigation with the U.C.C.. This Court discussed spoliation in the *Carrera* case, writing, Generally, a party claiming spoliation of evidence must show the following events -- I'm sorry -- elements. That, one, the party had an obligation to preserve the electronic evidence at the time it was destroyed; number two, the electronic evidence was destroyed with a culpable state of mind; and three, the destroyed evidence was relevant and favorable to the party's claim, such that a reasonable trier of fact could support that claim. A duty to preserve arises when a party knows or should know that certain evidence is relevant to pending or future litigation.

The Debtor did not plead or prove any of these elements,

particularly the elements that electronic evidence was destroyed and that Mr. Dondero had an obligation to preserve that evidence at the time.

In any event, it did not occur during the pendency of this TRO and so it cannot be a violation of the TRO.

The third charge that the Debtor brings is that Mr. Dondero trespassed on the Debtor's property. Again, it is not a clear violation of any specific and definite order of the Court. Mr. Dondero did not have any reason to believe that going to the Highland office would violate the TRO. The charge relates to Mr. Dondero giving his deposition in a conference room at the Highland office on January 5, 2021. However, Mr. Dondero testified that he gave his deposition in the Highland offices on December 14th, four days after the entry of the TRO. And at that TRO [sic], Mr. Dondero made clear to Mr. Morris that he was giving his deposition in the Highland conference room. No one at the Debtor claimed that it violated the TRO for Mr. Dondero to give his deposition on December 14th from the Highland conference room, and the TRO did not change between the time that Mr. Dondero gave his deposition on the 14th and the time that he gave it on January 5th.

Therefore, if it wasn't a violation of the TRO on December 14th, it wasn't a violation on January 5th. The only thing that changed was that Mr. Pomerantz, in his letter on December

23rd to Mr. Lynn, but as we discussed in our objection to this line of questioning, that -- that violates Rule 65(d) because that is a document outside of the TRO itself.

Fourth, the Debtor claims that Mr. Dondero violated the TRO by interfering with the Debtor's trading as the portfolio manager of certain CLOs. This charge is admittedly closer to the language of the TRO. However, this allegation is insufficient to hold Mr. Dondero in contempt. There is no clear and convincing evidence that Mr. Dondero violated the TRO.

In fact, Mr. Morris just told you in his argument that his evidence of this charge is that the Debtor alleged in the December 23rd letter that Mr. Dondero had interfered with the Debtor's business and that Mr. Dondero's lawyers did not respond.

There were various reasons of why the response that was given by Mr. Dondero's lawyers was quick and to the point and addressed what seemed to be the main thrust of the letter, being the cell phone. Mr. Dondero was on vacation in Aspen at the time, he was communicating with his lawyers over the phone around the Christmas holidays, and the letter is what it is. But in any event, the letter that went unresponded to with respect to that allegation is not clear and convincing evidence of anything that Mr. Dondero did.

But there's a real question as to what interference means.

Mr. Seery testified that Mr. Dondero did not stop trades. Mr. Seery was able to execute every trade he wanted to make in December. He didn't change his investment strategy. He didn't change his trading decisions. He continued to operate the Debtor as he deemed appropriate.

So it begs the question of what does interference mean? We cite an Eighth Circuit case in our brief, *Robinson vs. Rothwell*, that holds that an order that prevented any actions to interfere in any way with the administration of those jointly administered bankruptcies was neither sufficiently specific to be enforceable, nor clear and unambiguous.

The evidence shows that the only action Mr. Dondero took was to ask Jason Post, his chief compliance officer, to take a look into some of the trades that Mr. Dondero was made aware of. Mr. Dondero did not know what Mr. Post did with respect to the trades until he heard Mr. Post's testimony at the January 23rd hearing. He testified to that on Monday.

But to be clear, all of the trades were executed and they all closed. Mr. Post's actions were merely to instruct the Advisors' employees not to book the trades after the fact because they did not conform to compliance procedures, but the Advisors' employees were under no obligation to book those trades in the first place.

In any event, those are actions of Mr. Post, not of Mr. Dondero, and there was no evidence that Mr. Dondero even took

those actions or even encouraged those actions.

Number five, the Debtor claims that Mr. Dondero violated the TRO by pushing and encouraging the K&L Gates clients to make further demands and threats against the Debtor. This charge attempts to invoke Paragraph 3 of the TRO that Mr. Dondero is enjoined from causing, encouraging, or conspiring with a person or entity to engage in any of the prohibited conduct, the allegation being threats against the Debtor. This charge is problematic for two reasons. First, what is a threat? The evidence consisted of two letters from the K&L Gates law firm to the Pachulski law firm. The first letter was a December 22nd letter that was simply a request between counsel that Debtor refrain from certain actions. The Debtor rejected that request. The Debtor was not intimidated or threatened by the request and did not change its course in any way. Mr. Seery testified to that.

In fact, the Debtor sent a rejection of the request the following day, and also demanded a withdrawal of the request and threatened sanctions for filing it, but -- or for sending it, but it was -- it did not change the Debtor's course in any way.

The next letter referred to was the Funds and Advisors letter, that they may take subject to the automatic stay to exercise a contractual right that they along with their counsel felt that they had. That was a letter that -- that,

again, Mr. Dondero testified he had nothing to do with the sending of, and although he later approved the position taken in the letter, agreed with the position taken in the letter, he did not do anything to cause the sending of the letter.

But, and that goes to my next point, that there was no evidence, other than the Debtor's suspicions, and Mr. Seery testified that his only evidence of this was that Mr. Dondero admitted that he sent an email to Mr. Post and that subsequently these letters were sent. And he concluded that, based on those two facts, that Mr. Dondero was pushing, encouraging, or directing the sending of these letters. However, you heard evidence directly to the contrary from Mr. Dondero himself.

Number six, the Debtor alleges that Mr. Dondero violated the TRO by communicating with the Debtor's employees to coordinate their litigation strategies against the Debtor. The first problem with this charge is the ambiguity of what Mr. Dondero is and is not allowed to do under the TRO, because you've got Footnote 2 of the TRO that says, For the avoidance of doubt, this order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

That footnote is at the very end of Paragraph 2, so that footnote apparently applies to every single prohibited conduct

element in Paragraph 2. So, therefore, you've got that exception to the TRO.

Second, you've got an exception to the TRO that's built into letter (c) that says that the -- Mr. Dondero was specifically allowed to communicate with employees related to shared services. The employees, Mr. Ellington and Mr. Leventon, were both part of Highland's legal department, which was part of a shared services agreement.

Third, Mr. Ellington was tasked with the role of go-between between Mr. Seery and Mr. Dondero. Mr. Dondero testified to that. Mr. Dondero testified that that role did not change after December 10th and that he continued to receive communications from Mr. Ellington that were -- or, I guess sent through Mr. Ellington that were from Mr. Seery. And moreover, Mr. Seery continued to talk to Mr. Ellington and send such messages up until January 4, 2021.

Given these exceptions to the TRO and the necessity of analyzing each communication to determine if it's permissible creates uncertainty and ambiguity. Therefore, this provision is not sufficiently specific to be enforceable.

In any event, the Debtor has not proved its allegation that Mr. Dondero coordinated his legal strategy against the Debtor with Mr. Ellington and Mr. Leventon. All you have is a few text messages and emails that may have been forwarded to Mr. Ellington or text message -- one text message sent to Mr.

Leventon. There's no evidence of a coordination of legal strategies against the Debtor.

Even if they had a common interest to pursue in this bankruptcy, the evidence showed that neither Mr. Ellington nor Mr. Leventon discussed a common interest agreement with Mr. Dondero's lawyers or participated in a drafting of a common interest agreement with Mr. Dondero and his lawyers, and that they never entered a common interest agreement with Mr. Dondero and his lawyers.

Number seven, finally, the Debtor alleges that Mr. Dondero violated the TRO by preventing the Debtor from completing its document production. This relates to the production of financial documents for the Get Good and Dugaboy Trusts. Once again, this is not a clear, direct violation of a specific order of the TRO because there's no provision in the TRO regarding the Debtor's document production or Mr. Dondero's document production or the document production of trusts that he may be related to.

But the evidence does not even support a finding that Mr. Dondero prevented the Debtor from completing its document production with the U.C.C.. In fact, Douglas Draper has been attempting to work, as you see from our exhibits, with Mr. Morris to get these documents produced since mid-December. Mr. Draper simply requested that he be allowed to look at the documents before they went out.

The only action that Mr. Dondero has taken in this regard was to ask that Melissa Schrath not produce the documents without a subpoena, which is to say that he wanted the proper legal protocols followed.

I will address their damages, Your Honor. With respect to damages, I submit that Mr. Dondero does not have fair notice of the damages that the Debtor seeks in this proceeding. The Debtor has put on no evidence of any monetary damage. Instead, the Debtor appeared to seek its fees in connection with bringing the contempt charges.

However, the evidence the Debtor submits is over 85 pages of fee statements reflecting time entries starting on November 3, 2020. Those entries date back well before the relevant time period.

And moreover, the Debtor did not introduce the fee statements with a sponsoring witness, so we have no testimony as to the reasonableness or necessity of these fees or any of the other loadstar factors.

But more problematic, we have no way to sort through the 85 pages of the statements and identify which entries the Debtor contends were incurred in connection with the Debtor's motion.

Although the burden is not on Mr. Dondero to do so, an examination of the fee statements would suggest that hundreds of thousands of dollars in fees were wholly unrelated to the

proper time period or the subject matter.

In sum, Your Honor, there is simply no clear and convincing evidence that Mr. Dondero violated a definite and specific order of this Court. The TRO had its intended effect. Mr. Dondero changed his behavior. Even though he may not have agreed, and he testified that he did not agree with many decisions that Mr. Seery made after the entry of a TRO, he made a conscious effort not to interfere.

However, the TRO had unintended effects as well, creating a situation where Mr. Dondero tried to comply with the order and he thought he was complying with the order but he wound up defending himself in a contempt proceeding.

The mere fact that the Debtor contends that Mr. Dondero getting a new phone, appearing at the Highland offices to give his deposition, or attempting to ensure that proper procedures for discovery are followed violates the TRO means that the TRO does not give fair notice to Mr. Dondero of what he was and was not allowed to do.

I'll close with a reference back to the case I cited in my opening. It's *United States Steel Corp. v. United Mine Workers* from the U.S. Supreme Court. This is 598 [F.2d] 363 (5th Cir. 1979). It says that a party may avoid a contempt finding where it can show that it substantially complied with the order or has made every reasonable effort to comply.

The evidence shows, at a bare minimum, Mr. Dondero

substantially complied with the Court's order.

And I misspoke. That wasn't the case I thought I was closing with. This is the case from the Supreme Court. The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one.

Congress responded to that danger by requiring a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid. That's the *Longshoremen Association v. Philadelphia Marine Trade Association* case, 389 U.S. 64.

THE COURT: All right. Your time is up. Thank you.

MR. WILSON: Thank you, Your Honor.

THE COURT: I'm going to have some questions for you and Mr. Morris, but I'm going to wait and hear the rebuttal and then have some questions for -- a couple of questions for each of you.

Mr. Morris, go ahead.

MR. MORRIS: Sure. Two minutes, Your Honor.

There's nothing ambiguous about the order. It says don't talk to employees except for shared services. Mr. Wilson just talked about all kinds of things that have -- he made no attempt to argue that any of these communications have to do with shared services.

The order says don't violate the automatic stay. You

didn't need the order to do that. Your Honor actually made the observation at the time. So, you didn't need it, but it was in there, and he knew it. There's nothing vague and ambiguous about that.

Don't interfere with the Debtor's business. I don't know how it could be any clearer, Your Honor. They seem to suggest that you should have put in the order, don't communicate about discovery. Don't communicate about common interests. Don't communicate -- no. That's not what's required. There's a blanket prohibition on communication, and that applies to everything except for shared services.

With respect to Mr. Rothstein, Mr. Seery testified accurately, it will never be factually disputed, that what Mr. Rothstein did with the wiping down of the phones was to wipe down the information that was on the Debtor's server, *i.e.*, emails and things that are on the Debtor's server. He testified very clearly that text messages are not part of that. So the wiping that Mr. Rothstein did was really at Mr. Seery's instruction and it was just to get him off the Debtor's system.

Interference. Mr. Wilson seems to think that the only thing we have here is the Debtor's letter. No. The Debtor's letter said you interfered. There's no response. But more importantly, we rely on Mr. Dondero's sworn testimony. Question, "You personally instructed on or about December 22,

2020 employees of those Advisors to stop doing the trades that Mr. Seery had authorized?" Answer, "Yeah." That's at Page 73. He's trying to walk it back, but the testimony is what it is.

We have proven beyond clear and convincing evidence. We've actually proven beyond reasonable doubt that Mr. Dondero has violated the TRO multiple ways.

With respect to damages, if Your Honor wants to have a hearing, if we really need to go down that path, that's fine, but it's always going to be subject to dispute because there's so many professionals involved. Think about all the people on the phone today.

I have nothing further, Your Honor.

THE COURT: All right. A couple of follow-up questions.

With regard to the cell phone, tell me what evidence I really have before me. I mean, there's a lot of, you know, argument and commentary of Mr. Dondero whether this is much ado about nothing or not, but what really is my evidence besides the testimony I heard? You've mentioned the I forget what date letter from the Bonds Ellis law firm regarding the phone, but what other evidence do I have that you would say is relevant on this issue?

MR. MORRIS: I'm sorry, who's the question directed to, Your Honor?

THE COURT: You, and then I'm going to ask Mr. Wilson the same thing.

MR. MORRIS: Okay. Very, very, very simply. Just one second, Your Honor. The evidence that I have on the issue of the cell phone. Exhibit 55 says that text messages are the Debtor's property. Right? And this is an allegation -- this is an allegation that Mr. Dondero violated Section 2(e) of the TRO, which (audio gap) him from violating the automatic stay. Section 263(a)(3) prevents anyone from exercising control over the Debtor's property. So the handbook itself describes text messages related to company business are the property of Highland. Right? So you've got the word property in the handbook, you've got the word property in Section 263(a)(3), and you've got the TRO provision that prevents the violation of the automatic stay.

THE COURT: All right. So the evidence --

MR. MORRIS: Next, --

THE COURT: -- Exhibit 55, the employee handbook. And what other evidence?

MR. MORRIS: Right. And then, next, we know that Mr. Dondero understood that. How do we know that he understood that? Because twice in the year 2020, including just moments before he left, he agreed to the certifications that can be found at Exhibits 56 and 57. And those certifications state, among other things, this is Mr. Dondero's certification: I

have received, have access to, and have read a copy of the employee handbook, and I am in compliance with the obligations applicable therein.

So he -- that's what the handbook, that was the company policy, and he said that he knew it.

We know that in January of 2020 he specifically entered into a corporate governance agreement in which the U.C.C. obtained the right to conduct an investigation of related-party claims. We know that Mr. Dondero was the subject of related-party claims. We know that the U.C.C. shares the privilege with the Debtor with respect to related party-claims. This was part of the agreement that he entered into. He knew no later than January 9, 2020 that the Debtor -- that the U.C.C. was conducting an investigation of him.

And if there was any doubt about that, in July 2020 the U.C.C. filed its motion for -- to compel the production of documents. And Mr. Dondero's own lawyers, at Exhibit 40, submitted a response to the U.C.C.'s motion to compel in which it said the proposed protocol the Committee seeks, among other things, documents, emails, and other electronically-stored information, exchanged from or between nine different custodians, who include Dondero. The Committee has requested all ESI for the non-custodians, including, without limitation, text messages.

So he knew he was under investigation. He knew the

Committee wanted them. His lawyers told you that he knew the Committee wanted them. And Your Honor subsequently issued an order relating to those text messages.

With no notice to the Debtor, and this is his testimony, with no notice to the Debtor, with no approval of the Debtor, he went out and swapped the phone. And nobody knows where the phone is today, but he had it. He knew where it was after the TRO was entered. He knew because Jason Rothstein told him on December 10th at 6:25 p.m. at Exhibit 8 that the cell phone exists. Okay? He swapped out the number without the knowledge and consent of the Debtor. He, you know, did whatever he did with the cell phone and the information. Nobody knows where it is.

He actually testified, and I don't have the line, he actually testified that it was thrown in the garbage last time. Now he says I don't know what happened to it. I could dig it out, Your Honor, if I had the time. I don't even think it's necessary. But at the last hearing on January 8th, it's in the evidence and I'll pull it out on appeal when that happens, Mr. Dondero testified that it was disposed of and thrown in the garbage.

That's the evidence that I have, Your Honor, as to what happened to the cell phone, why it was the company's property, and why it's a violation of the TRO Section 2(e) to have thrown it in the garbage without notice, when he knew he was

subject to investigation, when his lawyers told you that they knew the U.C.C. wanted the text messages, when you ordered that those text messages be produced.

THE COURT: All right. And I can go back and look at the transcript I'm sure we're going to have shortly from Monday's hearing to verify my memory of this, but maybe you can tell me. Am I remembering correctly that Mr. Seery testified that Highland should have -- the Debtor should have the emails that might have been on the phone because they would be on either Highland's server or the cloud, Highland's cloud or something, correct?

MR. MORRIS: Yes. This is not about emails. We do have emails, and that's how we were able to offer some of them into evidence, frankly, because we do have emails, if it was on the Debtor's server. Now, we understand that Mr. Dondero may have used other URLs, other email addresses that we would never have. But any information that was on the Debtor's server, we admittedly have. Text messages are not among them. And you heard Mr. Seery testify that we cannot go to AT&T or Verizon or whatever the carrier is. You have to go to Apple, and they won't give them to you. Okay? We can't -- they will never, ever be found. They just won't.

And so it's only the text messages that we're talking about. We're not talking about email. In fact, Your Honor, in compliance with the Court's order, because we were able to

do it as Debtor's counsel, in compliance with your Court's order, the Debtor produced, I think, seven or eight or nine million emails of the nine custodians over the five years prior to the petition date to the Committee over the summer. It was a gargantuan task. So, just to be clear, this is about text messages, not about emails.

THE COURT: Okay. All right. Well, let me --

MR. MORRIS: Oh, I'm sorry. If I may, just one more thing.

THE COURT: Uh-huh.

MR. MORRIS: Because the evidence is also in the record that he used text messages to communicate with business. There's no dispute about that.

THE COURT: Okay.

MR. MORRIS: Now I'm through.

THE COURT: All right. Well, I'm going to go to Mr. Wilson now. What do you think is the evidence in the record that is relevant to this whole cell phone issue?

MR. WILSON: Well, I would -- I would say two, two things, two big-picture items, Your Honor. Number one, like I referred to on Monday and like I referred to in my closing, Rule 65(d) says that every restraining order or injunction must describe in a reasonable detail and not by referring to the complaint or other document the act or acts restrained or required.

They're having to refer to Section 362 of the Bankruptcy Code. They're having to refer to --

THE COURT: Okay, Mr. Wilson, I'm going to stop you. This is turning into legal argument. And I understand your legal argument, that you don't think the TRO was specific enough with regard to the cell phone. I understand that, and you may be right. You may be wrong; you may be right. But I'm asking now, assuming you're wrong and this cell phone issue is a big deal, tell me what evidence you think I should focus on.

MR. WILSON: Well, Your Honor, there's really only one document that I think is relevant to this issue, and that would be the Debtor's Exhibit 8, which is the text message from Jason Rothstein to Mr. Dondero on Thursday, December 10th, at 6:25 p.m. And that text message says, I left your old phone --

THE COURT: Right.

MR. WILSON: -- in the top drawer of Tara's desk.

THE COURT: Uh-huh.

MR. WILSON: Your Honor, that testimony confirms what Mr. Dondero said about how he already had a new cell phone by December 10th. And I would say that the other -- the other issue is that if anybody improperly wiped the cell phone, it was Highland itself. Highland had possession of the cell phone up to two weeks before December 10th. And so the

actions --

THE COURT: Okay, again, not argument, evidence. My evidence.

MR. WILSON: Well, I think that this -- I think this exhibit is this evidence, because Jason Rothstein was a Highland employee, and the Highland employee is telling Mr. Dondero on December 10th that he's returning his cell phone to the desk drawer. So that's why I think this is the most relevant piece of written evidence on this. I think that the testimony also addresses it, and you can review that if you would like, Your Honor.

THE COURT: Okay. Let me figure out my notes here. My next question is for you, Mr. Morris. The prohibition in the TRO on Mr. Dondero communicating with Highland employees except as it pertained to shared services agreement, I think I hear you making the argument that Mr. Ellington was in Highland's legal department and shared services agreements encompassed the legal department of Highland; therefore, it was okay for him to talk to Mr. Ellington about anything. Am I putting words in your mouth, or is that your argument?

MR. MORRIS: That's for Mr. Wilson or for me?

THE COURT: That's for Mr. Wilson. Okay? And I have a second -- a follow-up to that, but go ahead and help me to understand. Is that your argument?

MR. WILSON: I think that my argument is, on this

matter, that the -- that the provision is not clear and specific enough to be enforceable because it's vague and unambiguous -- I'm sorry, vague and ambiguous, given that there's two exceptions in the TRO itself that are subject to interpretation, as well as an exception --

THE COURT: Okay. Again, again -- okay. I understand there's the exception with regard to the shared services agreement and with regard to you can file court pleadings or take legal positions in court. But I'm trying to get at, is your -- is the thrust of your argument that hey, any communications with Scott Ellington were fine because he was in the legal department and legal services are part of shared services agreements, which were excepted out of the TRO. Is that a proper characterization of your legal argument?

MR. WILSON: Well, I've got to tell you, Your Honor, I think that that is part of it. I think that the real -- the real issue goes to Mr. Dondero's state of mind and what he believed he was and was not restrained from doing and what the order on its face clearly and specifically restrains him from doing.

And my argument is that, with the exceptions and with the other testimony that was offered about Mr. Ellington's role between Mr. Seery and Mr. Dondero, that he was simply unclear as to what he was restrained --

THE COURT: Okay. Tell me -- tell me -- okay. I'm trying to get a direct answer, and what I think I'm hearing is you don't necessarily think conversations with Ellington would fit into the shared services agreement but you think that's what James Dondero thought. Is that what you're now saying?

MR. WILSON: Well, I believe that Mr. Dondero's testimony was that he was under the impression that because, for various reasons, because that he had been doing this for twelve months and also because it continued after the December 10th hearing, that he was allowed to communicate items to the Debtor in what he termed the role as settlement counsel. And despite Mr. Seery's denial of giving Mr. Ellington any instruction, I think that the issue is what was Mr. Dondero's state of mind, and so I do believe that Mr. Dondero thought he was communicating pursuant to shared services. I do believe he thought he was communicating in a permissible way pursuant to the settlement counsel issue, because he thought that a lot of these issues that he was forwarding text messages to Mr. Ellington would only -- would keep him apprised of where they were, because the whole time Mr. Dondero was still attempting to settle this case through a pot plan.

THE COURT: Okay. And I guess, since you've mentioned it, what is my evidence that Mr. Ellington was the designated, recognized settlement counsel? You know, he -- Mr. Dondero says it. Mr. Seery says absolutely no. Do I have

any other evidence on that point in the record?

MR. WILSON: Well, there -- there was proposed evidence that I submitted earlier this morning on that issue from Mr. Ellington's deposition.

THE COURT: I am not -- I'm asking what's in the record. What's in the record?

MR. WILSON: Right. Well, the evidence in the record on that is Mr. Dondero's testimony.

THE COURT: Okay. And here was a follow-up I meant to ask on shared services, and I'm going to ask Mr. Morris this, too. I thought I heard Mr. Seery testify that -- he testified about what he considered kind of the bizarreness of the legal department at Highland as it had historically been set up, and I thought he said legal was not part of the shared services agreement. Do you want to respond to that?

MR. WILSON: Well, I would respond to that, Your Honor. The shared services agreements were in place many years before Mr. Seery came into being.

THE COURT: Right. Okay.

MR. WILSON: And Mr. Dondero had been operating under those agreements for many years before Mr. Seery came into being.

THE COURT: Was legal covered by the shared services agreement or not?

MR. WILSON: It was, Your Honor. I put -- I put both

of the shared services agreements in the record, and I had Mr. Dondero read the provisions that talked about how broadly the legal services were covered by shared services.

THE COURT: Did it change during the bankruptcy?

MR. WILSON: Your Honor, there was no amendments or modifications to those agreements until they were eventually terminated by the --

THE COURT: Okay.

MR. WILSON: -- Debtor. We had the --

THE COURT: Okay. So there were no written --

MR. WILSON: We had the evidence in our record.

THE COURT: There were no written amendments that -- all right.

MR. MORRIS: If I may, Your Honor? Because I --

THE COURT: You may. Mr. Morris, go ahead.

MR. MORRIS: I've got -- I've got a number of thoughts on this.

THE COURT: Okay.

MR. MORRIS: If Mr. Dondero -- let's look at the language. It's always helpful to look at the language of the order. The language of the order could not be clearer. Section 2(c) prohibited him from communicating with any of the Debtor's employees. Full stop. That is a blanket, unambiguous prohibition. Total and complete. There is one exception. Not two, but one: except as it specifically

relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero.

Mr. Dondero was not party to a shared services agreement. You have two entities that are. They're the Advisors. Those shared services are in Exhibits 1 and 2 of the -- of the Defendant.

There is no dispute that among the services provided were legal services. The point that Mr. Seery was making and the objection that he took to the way the question was phrased was the notion that the legal department was somehow kind of assigned or available. The Debtor wasn't obligated to provide legal services. He just -- he was making a very technical but very accurate and careful distinction between the legal department and the obligation to provide legal services.

THE COURT: Okay.

MR. MORRIS: We don't dispute it. It's, in fact, precisely why we agreed to put it in there, because the Debtor had a contractual obligation to provide all kinds of services, whatever they may be, under those agreements. So I want to be really clear about that.

What Mr. Wilson cannot do and what he will never be able to do is show you that any of the communications that are at issue in this case have anything to do with shared services. And if they're not related to shared services, they are a violation of the TRO.

There's only arguably, arguably, two that could be -- and why do I know that? I know that because none of these communications have any -- have any employee of the Advisors on it. They don't have the lawyers for the Advisors on it. They have people who represent entities other than anybody -- Mr. Draper doesn't represent -- this is the evidence. Mr. Draper doesn't represent anybody who's party to a shared services agreement. Bonds Ellis doesn't do that. Right? There is only two.

Exhibits 26 and 52 are with K&L Gates and Mr. Ellington. And so you can say, well, at least K&L Gates represents Advisors, and at least Advisors are party to shared services agreements. But those communications themselves are adverse to the Debtor. And I asked Mr. Dondero specifically, is there any provision in the shared services agreements that requires the Debtor to provide services to the counterparty that are adverse to itself? Right? And he said no, I can't think of any. It was a candid admission on his part.

So, there's -- there's nothing in this long list, Your Honor, there's nothing in here that has anything to do with shared services. Getting a witness for a hearing to testify on behalf of Mr. Dondero doesn't concern shared services. Discussions, discussions with employees about entering a common interest agreement has nothing to do with shared services. Discussing Mr. Dondero's interest in the UBS appeal

of Acis or the potential appeal of HarbourVest's settlement agreement has absolutely nothing to do with shared services. Asking Mr. Dondero to provide leadership in the coordination of his counsel has nothing to do with shared services. Talk -- telling Mr. Seery about no Dugaboy without a subpoena, what does that have to do with shared services? Dugaboy doesn't have a shared services agreement. There is nothing that fits into the exception.

Mr. Wilson talks about the footnote. We want -- I wrote that footnote, okay, and I wanted to make it clear that this injunction would not permit him -- would not prohibit him from seeking relief before Your Honor. And that's all it says. It doesn't say that he can communicate with the Debtor's employees about these things. It says for the avoidance of doubt because I didn't -- I didn't think it would be appropriate, I didn't think it would be proper to clip his wings and prevent him from coming to the Court to seek relief. He could come to the Court to seek relief. What he can't do is call up the Debtor's general counsel and say hey, I need a witness to testify on my behalf. That's not what the footnote -- that's not what the footnote says, Your Honor. It says he can come to this Court or to seek judicial relief upon proper notice.

I mean, certainly have no notice that Mr. Ellington was identifying witnesses who would testify against the Debtor.

Had -- Mr. Seery testified to, to that. That's in the record. That if he knew that was happening, he would have fired them on the spot.

So, there's no exception. None of this stuff falls into any -- the one exception is shared services. Yes, there's a shared services agreement. Yes, it includes provision of legal services. But none of these communications have anything to do with that.

Mr. Wilson has made no attempts -- he never put one of the communications in front of Your Honor. He never had Mr. Dondero try to explain how any particular communication related to shared services, because they can't. They just can't. So they say, oh, well, there is a shared services agreement, and so -- or, he was talking about settlement counsel. They knew -- here's -- we have the consciousness of guilt that I mentioned earlier. We know that Mr. Dondero didn't think these communications would ever see the light of day because he expressed surprise that his privileged communications were up on the screen. That's the tell. If you play poker, Your Honor, that's the tell. He tipped his hand and he gave me the signal, I didn't think anybody was going to see this stuff because I'm really mad that my privileged communications are out there. But he shared them with Mr. Ellington. That's number one.

And number two, Mr. Dondero and his lawyers knew how to

get -- knew how to seek clarification if they thought there was any ambiguity. And how do we know that? Because at Docket No. 24 they filed a motion, and the motion was to clarify the TRO in order to permit Mr. Dondero to speak directly with board members about the pot plan. He wanted the permission, he wanted it to be clear that he had the right to talk to the independent directors about the pot plan. That can be found at Exhibit 24. But a week later or six days later, at Docket No. 29, he withdrew that motion.

So he knew that if he was confused about what this allowed and what it didn't allow, he knew he could make a motion. There was absolutely nothing preventing him or his lawyers from coming to the Debtor and saying look, there's a blanket prohibition against shared services, can we still talk to Mr. Ellington about settlement? Nothing prevented him from doing that.

But here's the kicker. Number three. What do any of these communications have to do with settlement? There's not a settlement proposal. There's not a request for information about the settlement. They have nothing to do with settlement. This is Mr. Dondero trying to say Scott Ellington had to know everything I thought about every issue in this case.

I mean, if Your Honor buys that, then we've wasted many, many, many, many, many hours of time and hundreds of thousands

of dollars on this process, if he can just say, I'm basically allowed to talk to Scott Ellington about anything because it's in my head and I want to try to settle the case and therefore I can share it with Scott Ellington.

Number one, there's nothing in the order that allows him to talk to Scott Ellington about settlement. Number two, there's nothing on the face of any of these communications that are about settlement. And number three, again, consciousness of guilt. He was shocked that his privileged communications were disclosed. He thought he could share them with Mr. Ellington but not with you and not with me and not with Mr. Seery.

I have nothing further.

THE COURT: All right.

MR. WILSON: May I respond to that, Your Honor?

THE COURT: Um, --

MR. WILSON: Just briefly.

THE COURT: Briefly.

MR. WILSON: Yeah. So, I pointed you to Exhibits 1 and 2 in the -- in the Dondero exhibits.

THE COURT: The shared services agreements.

MR. WILSON: Those exhibits are --

THE COURT: The shared services agreements.

MR. WILSON: That's correct. Those --

THE COURT: Uh-huh.

MR. WILSON: That's correct. Those two shared services agreements relate to Exhibits 4 and 5, which show that those agreements were in place up until they were terminated by the Debtor effective January 31, 2021.

The next point I'd make is that the order itself says specifically relates to shared services. And those shared services agreements are drafted very broadly. They talk about legal compliance and risk analysis, and one of them says assistance with advice with respect to legal issues, litigation support, management of outside counsel, compliance support, and implementation and general risk analysis. The other agreement just says legal services.

But the agreements themselves were drafted very broadly and intended to cover a large array of services to be provided, because the parties receiving the services in these agreements did not provide any of their own accountants or any of their own lawyers or any of their own back office people or any of their own various other providers that are covered by these agreements. And so, therefore, over the years that these agreements were in place, Mr. Dondero was used to going to his lawyers, which were both employees of Highland and employees of the Advisors under these agreements, for compliance purposes, and he was able to talk to them about all of these various issues. And so if on December 10th Mr. -- and accountants as well.

Mr. Dondero then on December 10th was prohibited from doing certain things, with the exception of items that specifically relate to shared services. So my argument would be that Mr. Dondero did not know whether he could talk to these people or not under the Court's order because the order was not clear and specific enough.

If these agreements broadly covered legal services and accounting services, and Mr. Dondero was free to talk to these people whenever he wants before the order, but then the order creates a carve-out for talking about anything specifically relating to the shared services, that broadly does cover legal and accounting, and the people he's accused of talking to in violation of the TRO are lawyers and accountants.

THE COURT: All right. Here's my last question. With regard to the trespassing argument, as I understand it, we're talking about December 14th and January 5th, two times, both of which --

MR. MORRIS: Your Honor, if I may, I really apologize for interrupting, but that's not -- that's not accurate.

THE COURT: Okay.

MR. MORRIS: As I brought out in the questioning yesterday, the Debtor had no problem with Mr. Dondero being in their offices on December 14th.

THE COURT: Okay.

MR. MORRIS: Okay? What happened was it was a change

because the Debtor exercised control over its property in its letter of December 23rd when it evicted Mr. Dondero from its premises and informed him in writing that any entry by him in the future would be deemed a trespass. So we take no issue --

THE COURT: Okay.

MR. MORRIS: -- and have no quarrel with December 14th.

THE COURT: Okay. I'm glad I asked. I was forgetting that train of event, chain of events.

All right. So we're just talking about the January 5th occasion where he came onsite for a deposition, correct, Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right. Do we have any evidence of that, other than, I guess, the testimony that is relevant for me to consider -- and this is to you, but it's especially going to be to Mr. Wilson, because I heard some testimony of Mr. Dondero: oh, look, I've got a calendar invite, or I don't know if he looked at his phone or was just recalling he had a calendar invite from someone on behalf of the Debtor saying, Go to the Highland conference room. Do I have any evidence of that calendar invite or any other evidence that is in the record you think I need to focus on?

MR. WILSON: Your Honor, we did not admit the calendar invite into the record, although we could do so. Mr.

Dondero, you know, testified about it, but the testimony he gave was that someone from the Highland legal department named Sarah Goldsmith sent him a calendar invite for his deposition to appear the same way he did at the December 14th deposition.

THE COURT: Okay. So we have just the testimony? Okay.

Mr. Morris, anything further?

MR. WILSON: Your Honor, we'd be -- we'd be willing to supplement the record with the actual calendar invite.

THE COURT: I'm not --

MR. WILSON: We have it --

THE COURT: We've already gone through that.

MR. WILSON: -- on PDF.

THE COURT: We've already gone through that. I'm just asking was it in there and I just missed it on Monday? And the answer is no.

Any other evidence that I need to consider, you think, on the trespassing issue that's in the record?

MR. WILSON: Well, Your Honor, just that -- that, I mean, as you pointed out earlier, the -- it's the evidence that Mr. Dondero appeared in the Highland conference room on December 14th, which was after the entry of the TRO, and if that's not a violation of the TRO, then it can't be a violation of the TRO on January 5th.

MR. MORRIS: Your Honor, I do have evidence.

THE COURT: Okay. Tell me.

MR. MORRIS: Okay. So this would be at Exhibit -- Exhibit 36, which is the transcript of the preliminary injunction hearing, at Page 70, beginning at Line 20. I asked the following questions and got the following answers: Question, "You did not have the Debtor's approval to enter their offices on Tuesday to give your deposition, correct?" Answer, "No." "You did not even bother to ask the Debtor for permission, correct?" Answer, "I'm prohibiting -- I'm prohibited from contacting them, so, no, I did not."

THE COURT: Okay.

MR. MORRIS: So, he was in the offices. He didn't have approval. He didn't obtain consent. He didn't seek consent. That's his unambiguous testimony at Page 70, Line 22, continuing on through Page 71, Line 2.

THE COURT: All right. Thank you.

All right. Well, I'm going to wrap it up here. This obviously warrants very careful consideration of the evidence, and so I'm going to take under advisement this matter and get you out a detailed written ruling as soon as I can get it out. So you'll be expecting something from me, again, detailed, in writing, in the hopefully very near future.

All right. If there's nothing else, we're adjourned.

MR. MORRIS: Thank you, Your Honor.

MR. WILSON: Thank you, Your Honor.

THE CLERK: All rise.

MR. POMERANTZ: Thank you, Your Honor.

(Proceedings concluded at 11:27 a.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 **03/25/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

No. _____

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

In re James D. Dondero,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the Northern District of Texas
Civil Action No. 3:21-CV-00132-E
Hon. Ada Brown, Judge

PETITION FOR WRIT OF MANDAMUS

D. Michael Lynn
Matthew D. Stayton
John T. Wilson, IV
Bryan C. Assink
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR PETITIONER

Dondero Ex. 17

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Highland Capital Management, L.P.

2. James D. Dondero

3. Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, counsel for Highland Capital Management, L.P.

4. Hayward PLLC, 10501 N. Central Expy, Ste. 106, Dallas, TX 75231, counsel for Highland Capital Management, L.P.

5. Bonds Ellis Eppich Schafer Jones LLP, 420 Throckmorton Street, Suite 1000, Fort Worth, TX 76102, counsel for James D. Dondero

/s/ Matthew Stayton
Matthew Stayton,
Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

RELIEF SOUGHT

Mr. James Dondero respectfully requests that this Court grant his Petition for Writ of Mandamus and (1) dissolve the bankruptcy court's preliminary injunction against Mr. Dondero; or (2) alternatively, direct the District Court to accept and consider the merits of Mr. Dondero's appeal of the preliminary injunction under 28 U.S.C. § 1292(a) or (b).

ISSUES PRESENTED

1. Did the bankruptcy court's preliminary injunction order against Mr. Dondero fail to set forth the reasons for its issuance and its restrictions in clear and specific terms and reasonable detail to ensure reasonable compliance under the threat of contempt?

2. Did the District Court abuse its discretion by rejecting Mr. Dondero's clear and indisputable statutory right to appeal the injunction under the plain language of 28 U.S.C. § 1292(a)?

3. Did the District Court abuse its discretion by refusing to grant Mr. Dondero leave to appeal the injunction under 28 U.S.C. § 1292(b), where it is clear and indisputable that injunctive relief is the controlling issue materially affecting the case?

4. Does Mr. Dondero have no other adequate means to seek review of the injunction? Alternatively, should this Court treat this mandamus as an interlocutory appeal and dissolve the injunction or reverse and remand?

INTRODUCTION

This dispute presents the rare case justifying extraordinary mandamus relief. The bankruptcy court issued an injunction order so broad and vague that Mr. Dondero cannot conduct normal affairs without the threat of contempt at every turn. This threat is real, not perceived, and has been used in the underlying case.

Making matters worse, the District Court denied Mr. Dondero his statutory right to appeal the injunction under 28 U.S.C. § 1292(a), ruled it was within the court's sole discretion to grant leave to accept the appeal under section 1292(b), and then simply denied leave to appeal—a clear and indisputable error from which there is no viable remedy. As a legal matter, the plain language of section 1292(a) demonstrates that injunctions are not insulated from review. As a policy matter, injunctions entered by Article I bankruptcy courts cannot be more insulated from appellate review than those entered by Article III courts.

This Court should grant mandamus and dissolve the overbroad injunction or, alternatively, direct the District Court to accept the appeal as a matter of statutory right.

STATEMENT OF FACTS

1. Background of the Highland Capital bankruptcy and its CEO James Dondero.

On October 16, 2019, Highland Capital Management, L.P. (the "Debtor") filed a voluntary petition for relief in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (the "Bankruptcy Case"). (App.0011) At the time, Mr. James D. Dondero ("Mr. Dondero"), the Debtor's co-founder, was the Debtor's President and Chief Executive Officer and signed the voluntary petition for relief as the President of Strand Advisors, Inc., the Debtor's General Partner. (App.0014) Later, venue was transferred to the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). (App.1349)

On December 27, 2019, the Debtor filed a *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*. (App.0109) The Bankruptcy Court entered an order approving this motion on January 9, 2020. (App.0188)

In connection therewith, an independent board of directors was appointed for the Debtor's general partner, Strand Advisors, Inc. (the "Board"). The members of the Board are James P. Seery, Jr., John S.

Dubel, and Russell F. Nelms. Mr. Seery was later retained as the Debtor's Chief Executive Officer. (App.0197)

2. After Mr. Dondero expresses concern regarding the Debtor's management, he is asked to resign.

Mr. Dondero continued to work for the Debtor as a portfolio manager. (App.0198) During that time, he expressed concern regarding Mr. Seery's management of the Debtor, as well as the dissipation of assets. As a result of Mr. Dondero's disagreement with Debtor's management and his filing of pleadings allegedly adverse to the Debtor, the Debtor asked for Mr. Dondero to resign, which he did effective October 9, 2020. (App.0786)

On November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as later modified, the "Plan") and the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Disclosure Statement"). (App.1536) That same day, the Bankruptcy Court entered an order approving the Disclosure Statement, allowing for the solicitation of the Debtor's Plan. (App.1536)

3. Highland Capital seeks to restrain Mr. Dondero through an adversary proceeding.

On December 7, 2020, the Debtor commenced the adversary proceeding styled *Highland Capital Management, L.P. v. James D. Dondero*, Adv. Proc. No. 20-03190 by filing *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* (the "Complaint"). (App.0556) The Debtor also filed *Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction Against Mr. James Dondero*. (App.0569)

Mr. Dondero believes that the Debtor sought the TRO (and later filed a contempt motion) to (i) impugn Mr. Dondero's reputation before the Bankruptcy Court, (ii) prevent Mr. Dondero and his related entities from being able to exercise and pursue their legal rights and remedies related to the Bankruptcy Case or their relationship with the Debtor or its business, and (iii) attempt to gain an undue advantage in potential future disputes between the parties. (App.1245)

Three days later, the Bankruptcy Court entered the temporary restraining order against Mr. Dondero (the "TRO"). (App.0635)

The Bankruptcy Court then set the hearing on Debtor's motion for

a preliminary injunction for January 8, 2021, and Mr. Dondero filed a response in opposition to the motion. (App.1008) Trial concerning the Debtor's request for a permanent injunction is currently set for the week of May 17, 2021. (App. 0696)

4. Highland Capital immediately seeks to hold Mr. Dondero in contempt for violations of a broad and unclear temporary restraining order.

On January 7, 2021, the Debtor moved to hold Mr. Dondero in contempt for allegedly violating the TRO. (App.0975, 0984)

Rather than citing a violation of a clear and specific term of the TRO, the Contempt Motion seeks to hold Mr. Dondero in contempt for several actions that cannot be fairly interpreted to violate the TRO, including (i) Mr. Dondero replacing his cell phone and leaving the old phone at Debtor's office; (ii) going into Debtor's near-empty office space (which he was arguably entitled to do under certain shared services agreements) to appear for a deposition noticed by the Debtor; (iii) two request letters sent by counsel for related third-party entities to Debtor's counsel; and (iv) the filing (and eventual prosecution) of a motion brought by related third-party entities (before the TRO was even entered), which was explicitly allowed under the TRO. (App.0986, 0990-92, 1543)

The Contempt Motion hearing has been continued or delayed several times and is now set to occur on March 22, 2021. (App.1288)

5. The Bankruptcy Court enters a broad preliminary injunction order against Mr. Dondero.

On January 8, 2021, the Court conducted a hearing and found that a preliminary injunction should be entered against Mr. Dondero. (App.1015) On January 12, 2021, the Court entered its *Order Granting Debtor's Motion for a Preliminary Injunction Against James Dondero* (the "Preliminary Injunction"). (App.0001)

Among other things, the overbroad Preliminary Injunction enjoins and restrains Mr. Dondero from "(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")." (App.0003-04)

The Preliminary Injunction also purports to restrain Mr. Dondero "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." The Preliminary Injunction further prevents Mr. Dondero from speaking with two former employees of the Debtor and from entering Debtor's office space or using any of the Debtor's computer, email, or information systems.[1] (App.0004)

The Preliminary Injunction provides that it "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." (App.0004)

6. The District Court refuses Mr. Dondero's statutory right to appeal the injunction.

On January 12, 2021, Mr. Dondero filed a *Notice of Appeal as of Right or, Alternatively, Notice of Appeal with Motion for Leave to Appeal* to appeal the entry of the broad and unclear Preliminary Injunction. (App. 1220) The following day, the Bankruptcy Clerk instructed Mr.

[1] Paragraphs 2 and 3 of the Preliminary Injunction are identical in all material respects with paragraphs 2 and 3 of the TRO. The Preliminary Injunction also contains three additional paragraphs of vague restrictions. (App.0002-04)

Dondero to separately file the notice of appeal and the motion for leave to appeal, and Mr. Dondero complied. (App.1229-30, 1234)

Eight days later, the Bankruptcy Clerk then transmitted the amended notice of appeal and motion for leave to the U.S. District Court for the Northern District of Texas, Dallas Division (the "District Court") and docketed the appeal. (App.1290, 1577-78)

On February 11, 2021, the District Court issued a *Memorandum Opinion and Order* (the "Memorandum Opinion") denying Mr. Dondero's right to appeal the Preliminary Injunction. (App.0006) In the Memorandum Opinion, the District Court ruled that (i) Mr. Dondero could not appeal the Preliminary Injunction as of right under 28 U.S.C. § 1292(a); and (ii) leave to appeal the Preliminary Injunction would not be granted under 28 U.S.C. § 158(a)(3) and 28 U.S.C. § 1292(b) because the appeal did not involve a controlling issue of law. (App.0006-10)

7. The Bankruptcy Court confirms the Plan—but its effective date remains unknown.

Meanwhile, on February 22, 2021, the Bankruptcy Court entered an order confirming the Debtor's Plan. (App.0361) The Plan's Effective Date is to be the business day on which the Confirmation Order becomes a final order and other conditions precedent to the effective date are

satisfied under Article VIII.A of the Plan.[2] (App.0308, App.0346) Article VIII.B further provides that the "conditions to effectiveness of this Plan . . . may be waived in whole or in part by the Debtor." (App.0347)

The Debtor has refused to provide Mr. Dondero with a date certain on which the Plan will go effective. In addition, other parties have filed motions to stay the effectiveness of the Confirmation Order pending appeal. (App.0522) If those motions are successful, the Effective Date of the Plan will be stayed pending the resolution of the appeals. Accordingly, the preliminary injunction against Mr. Dondero remains effective indefinitely.

STANDARD OF REVIEW

This Court's standard for issuing a writ of mandamus is well settled. *See In re Occidental Petroleum Corp.*, 217 F.3d 293, 295 (5th Cir. 2000). Mandamus is an appropriate remedy "when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court," and that error is

[2] *See* Plan, Article I.B, p. 14 of 66 ("*Effective Date* means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof."); Article VIII.A-B, p. 52 of 66.

irremediable on ordinary appeal. *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir. 1992) (internal citations and quotation marks omitted); *In re Occidental*, 217 F.3d at 295.

A party seeking mandamus relief must satisfy three requirements before the court will issue a writ of mandamus: (1) the petitioner must have "no other adequate means" to obtain the relief requested; (2) the petitioner must show a "clear and indisputable" right to the relief requested; and (3) the court, in its discretion, "must be satisfied that the writ is appropriate under the circumstances." *In re Volkswagen of America, Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc).

In the Fifth Circuit, mandamus relief may be available to obtain appellate review of bankruptcy orders that are otherwise non-appealable. *In re Lieb*, 915 F.2d 180, 186 (5th Cir. 1990) (citing *In re Barrier*, 776 F.2d 1298 (5th Cir. 1985) (per curiam)).

REASONS THE WRIT SHOULD ISSUE

The Bankruptcy Court entered an overbroad, ambiguous, unclear, and unspecific preliminary injunction in violation of Rule 65(d) leaving Mr. Dondero vulnerable to contempt proceedings on orders too vague to be understood or enforced. The District Court then refused to allow Mr.

Dondero's clear and indisputable right to appeal the preliminary injunction pursuant to 28 U.S.C. § 1292(a)—a plain misapplication of the statute. Preliminary injunctions entered by Article I bankruptcy courts should not be more insulated from appellate review than those entered by Article III courts. Because the District Court refused to consider Mr. Dondero's appeal of the preliminary injunction, Mr. Dondero has "no other adequate means" to obtain review of the preliminary injunction and mandamus relief is appropriate.

I. On its face, the preliminary injunction is overbroad, ambiguous, and not clear and specific—subjecting Mr. Dondero to contempt for lawful acts.

Several provisions of the preliminary injunction entered against Mr. Dondero are overbroad, vague, ambiguous, and unspecific—making Mr. Dondero vulnerable to prosecution for contempt for lawful acts.

Rule 65(d) of the Federal Rules of Civil Procedure provides that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." Fed. R. Civ. P. 65(d). The specificity requirement "ensures that a party who is restrained

by a preliminary injunction knows clearly what conduct is being restrained and why." *MillerCoors LLC v. Anheuser-Busch Cos., LLC*, 940 F.3d 922, 924 (7th Cir. 2019)

"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." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam). Accordingly, an injunction "cannot be so general as to leave the party open to the hazard of conducting business in the mistaken belief that it is not prohibited by the injunction and thus make him vulnerable to prosecution for contempt." *Williams v. United States*, 402 F.2d 47, 48 (10th Cir. 1967).

First, the provision of the injunction that prohibits Mr. Dondero from "interfering with or otherwise impeding, directly or indirectly, with the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan" is not clear, definite, and specific because it

does not list specific acts that are to be restrained.[3] Rather, it lists a broad category of conduct that could be read to apply to any number of unidentified actions related to the bankruptcy case or Debtor's business. This provision could be read to prevent any action of Mr. Dondero or his related entities to assert their individual legal rights in the bankruptcy case or to protect their individual business interests. It is simply that broad.[4]

Moreover, this provision prevents Mr. Dondero from engaging in other lawful conduct and duties. For example, Mr. Dondero is an investor in funds managed by the Debtor and the injunction bars him from acting in that capacity. (App.1150).

Second, the provision of the injunction restricting Mr. Dondero's communication with the Debtor's employees (and two of Debtor's former employees) is too broad and may impair Mr. Dondero's freedom of speech

[3] (App.0003-04)

[4] This provision could also be read to restrict the exercise of legal rights or other lawful actions that simply have the effect of being in disagreement with a decision of the Debtor, such as whether claims are properly treated or classified ("treatment of claims"), whether the Debtor's Plan complies with applicable law ("pursuit of the Plan"), whether the sale of assets owned or controlled by the Debtor is a proper exercise of its business judgment or should otherwise be pursued ("disposition of assets owned or controlled by the Debtor"), and whether Dondero could attempt to pursue his own alternative plan ("alternative to the Plan").

under the First Amendment to the U.S. Constitution.[5]

The Supreme Court has directed judges to scrutinize injunctions restricting speech carefully and ensure that they are "no broader than necessary to achieve [their] desired goals." *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 764-65 (1994).

Here, the scope of this provision of the injunction is too broad because it effectively enjoins all communications—of any kind, and of any nature—between Mr. Dondero and anyone employed by the Debtor (except as it relates to the shared services agreements). The provision fails to allow Mr. Dondero to communicate with Debtor's employees on personal or other routine matters unrelated to the Debtor's business or the bankruptcy case, and potentially restricts his ability to (i) communicate with employees of the Debtor who also serve in other capacities for Mr. Dondero, such as his personal assistants under the shared services agreements; and (ii) communicate with employees of the Debtor once their employment with the Debtor ceases. As a result, it is too broad. *See generally Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 183 (1968) ("An order issued in the area of First

[5] (App.0003-04)

Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted.").

Third, and similarly, the provision of the injunction that enjoins and restrains Mr. Dondero from "causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in the Prohibited Conduct" is too broad because it may enjoin unidentified third parties that are not a party to this proceeding. Those third-party entities have complex rights and interests independent from Mr. Dondero. There were no other parties to the underlying adversary proceeding. Because the injunction purports to restrain the independent actions of third parties from the same broad, vague, and nonspecific conduct as Mr. Dondero, it is improper and should be dissolved.

Fourth, the ambiguity of the preliminary injunction is further evidenced by the Debtor's attempt to hold Mr. Dondero in contempt for actions that do not violate a clear and specific provision of the TRO. *See supra* at p. 5. While the Debtor's Contempt Motion remains pending, the fact that the Debtor has utilized the broad and unclear provisions contained in the TRO and injunction to threaten contempt against Mr.

Dondero evidences the immediate and irreparable harm that will occur to Mr. Dondero if the preliminary injunction is allowed to stand. In addition, the purported exceptions of the TRO and preliminary injunction—those for communications regarding shared services and for "seeking judicial relief"—are vague and unclear as evidenced by the allegations of contempt for activity that should fall within these exceptions.[6]

Finally, while Mr. Dondero must obey the automatic stay, the provision of the injunction that prevents Mr. Dondero from "violating section 362(a) of the Bankruptcy Code" also violates Rule 65 because it is vague, nonspecific, and does not describe in reasonable detail the acts restrained.[7]

In violation of Rule 65(d), this portion of the injunction does not include any specific and identifiable prohibitions. Instead, it refers to an outside document or source and purports to make matters contained therein (11 U.S.C. § 362(a)) a violation of the injunction. This plainly violates Rule 65(d)(1)(C) because it refers to a document or source outside

[6] (App.0004, fn 2)

[7] (App.0004)

the face of the order instead of describing in reasonable detail the specific acts restrained. *See* Fed. R. Civ. P. 65(d). Accordingly, Mr. Dondero cannot ascertain from the face of the preliminary injunction what acts may or may not be prohibited by this provision.

This lack of specificity is particularly problematic in this case because of the complexity of the Debtor's business and the unclear positions asserted by the Debtor as to what qualifies as property of the estate.[8] Most of the Debtor's business is conducted either through subsidiaries or by the management of assets held by subsidiaries.[9] The Debtor has asserted in the bankruptcy case that the property held by these subsidiaries is not property of the estate or subject to the Bankruptcy Court's jurisdiction or oversight.[10] (App.0284-0294) Through

[8] *See generally* (App.0284)

[9] (App.0027, 0037-0038, 1891-1917, 0258-0270)

[10] *See Debtor's Response to Mr. James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Bankr. Dkt. 1546], para. 5 ("[T]he assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate." and "transactions occurring at non-Debtor entities . . . were otherwise arguably outside of this Court's jurisdiction and oversight.') (emphasis in original) and para. 10 ("Even though the value of the subsidiary's outstanding shares owned by the debtor may be directly affected by the subsidiary's disputes with third parties, Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate.") (citing *Parkview-Gem, Inc.*, 516 F.2d 807, 809 (8th Cir. 1975)) (internal citations and quotations omitted).

the adversary proceeding and contempt motion, however, the Debtor suggests that the Bankruptcy Court has jurisdiction to enjoin actions that may impact these subsidiaries or the property held by these subsidiaries. (App.0556-0596, 0975-0997) Given these issues, it is unclear what actions the Debtor may assert violate the automatic stay, particularly as to sections 362(a)(1)-(5) (preventing actions against the Debtor and property of the Debtor's estate), and the lack of specific restrictions in the order does not provide fair notice to Mr. Dondero of the acts restrained.

II. The District Court's refusal to allow Mr. Dondero to appeal the injunction as a matter of right under 28 U.S.C. § 1292(a) was error correctable by mandamus.

The District Court committed clear and egregious error in denying Mr. Dondero his statutory right to appeal the Bankruptcy Court's preliminary injunction under 28 U.S.C. § 1292(a). Moreover, on its face, the District Court's Order purports to be insulated from appellate review as a non-appealable interlocutory order denying leave to appeal under section 1292(b). Therefore, mandamus is warranted and the only available remedy.

The District Court, sitting as an appellate court, was required to accept and consider the appeal from the Bankruptcy Court's injunctive order under 28 U.S.C. § 1292(a), which provides:

> (a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:
>
> > (1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court . . . .

28 U.S.C. § 1292(a)(1).

Three Circuit Courts of Appeals—the Third, Sixth, and Seventh—agree that section 1292(a) permits the immediate appeal of bankruptcy court injunction orders to the district courts as a matter of right. *See Lindsey v. Pinnacle Nat'l Bank*,726 F.3d 857, 860 (6th Cir. 2013) ("Section 1292 also permits the immediate appeal of injunction orders, including those arising in all manner of situations in a bankruptcy proceeding."); *United Airlines, Inc. v. U.S. Bank N.A.*, 406 F.3d 918, 923 (7th Cir. 2005) (holding that under 1292(a) and bankruptcy court injunction must be treated as an appealable interlocutory order by the district court); *In re Prof'l Ins. Mgmt.*, 285 F.3d 268, 282 n.16 (3d Cir. 2002) (same).

This makes great sense: "As a policy matter, the rulings of a non-Article III bankruptcy court should not be more insulated from appellate review than the rulings of an Article III district court. The wiser exercise of discretion is to apply § 1292(a)(1) by analogy and allow the appeal of the preliminary injunction [to the district court]." *In re Reserve Prod.*, 190 B.R. 287, 290 (E.D. Tex. 1995)

For this reason, other district courts across the country have likewise held that a party may appeal as of right the grant or denial of an injunction by the bankruptcy court. *See, e.g., In re Midstate Mortg. Investors Group*, Civ. A. No. 06-2581, 2006 U.S. Dist. LEXIS 82474, 2006 WL 3308585, at *4-5 (D.N.J. Nov. 6, 2006) ("where the orders entered in the bankruptcy court are in the form of injunctive relief, the district court, sitting as an appellate court, is authorized under § 1292(a) to hear the appeal without the need to resort to discretion to grant leave to appeal"); *see also In re Reliance Acceptance Group, Inc.*, 235 B.R. 548 (D. Del. 1999).

Nevertheless, here, the District Court refused to apply section 1292(a)—denying Mr. Dondero his appeal as a matter of right. (App.0006-0010) Instead, the court erroneously found the appeal fell only

under the discretionary requirements set forth in section 1292(b), and then denied discretionary leave to appeal under the same subsection. (App.0009) Because the District Court framed its erroneous ruling as a denial of leave under section 1292(b), which is not generally an appealable interlocutory order, mandamus remains the only available remedy from this clear and egregious error.[11]

III. Even if an appeal as of right was unavailable under 28 U.S.C. § 1292(a), leave to appeal the preliminary injunction under 28 U.S.C. § 1292(b) should have been granted.

Even if the Preliminary Injunction is not appealable as of right under section 1292(a), leave to appeal should have been granted under section 1292(b) because there exists a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation.

28 U.S.C. § 158 permits interlocutory appeals to this Court from the bankruptcy court. It expressly provides that "the district courts of the

[11] And although the District Court here declared this an open question (i.e., whether section 1292(a) or (b) must apply), (App.0006-0009) the plain text of the statute and scores of cases interpreting section 1292(a) do not support this conclusion. *See* supra at II. The District Court simply had no discretion to refuse Mr. Dondero's statutory right to appeal the injunction order under section 1292(a).

United States shall have jurisdiction to hear appeals . . . (a)(3) with leave of the court, from other interlocutory orders and decrees; and with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title." 28 U.S.C. § 158(a)(3).

"Section 158(a) does not provide a standard for a district court to use in determining whether to grant leave to appeal; however, the courts generally have applied the standard provided under 28 U.S.C. § 1292(b) for interlocutory appeals from district court orders to a court of appeals." *Golden Rests., Inc. v. Denar Rests., LLC (In re Denar Rests., LLC)*, No. 4:09-CV-616-A, 2010 U.S. Dist. LEXIS 3317, at *35-36 (N.D. Tex. Jan. 14, 2010) (citing *Ichinose v. Homer Nat'1 Bank*, 946 F.2d 1169, 1177 (5th Cir. 1991)). That standard includes the following elements: "(1) the existence of a controlling issue of law as to the interlocutory order, (2) as to which there is substantial ground for difference of opinion, and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation." *Id.*; 28 U.S.C. § 1292(b).

"[A]ll that must be shown in order for a question to be 'controlling' is that resolution of the issue on appeal could materially affect the

outcome of litigation in the district court." *Arizona v. Ideal Basic Indus. (In re Cement Antitrust Litigation),* 673 F.2d 1020, 1026 (9th Cir. 1982). "[A] controlling question of law-although not consistently defined-at the very least means a question of law the resolution of which could materially advance the ultimate termination of the litigation-thereby saving time and expense for the court and the litigants." *Ryan v. Flowserve Corp.*, 444 F. Supp. 2d 718, 723 (N.D. Tex. 2006).

There is one controlling issue of law guiding the entire case—injunctive relief. The litigation itself is solely and entirely based on the Debtor's request for a preliminary, and eventually, a permanent injunction. (App.0556-0596) There are no other claims for relief in this adversary proceeding. Whether the injunction is vague and overbroad undoubtedly affects the outcome of the litigation as injunctive relief is the only relief sought. There is also a substantial difference of opinion—as demonstrated among other things by the parties' dispute and the Bankruptcy Court's entry of the injunction—that (i) cause existed for the injunction in the first instance; and (ii) whether the provisions of the injunction satisfy applicable legal standards, including Rule 65 of the Federal Rules of Civil Procedure. Stated differently, whether the

injunction satisfies applicable standards by being clear and specific is a controlling issue of law driving the entire case.

Nor will leave to appeal the preliminary injunction delay the bankruptcy case, as confirmation of the Plan occurred on February 22, 2021. (App.0361) Rather, a favorable resolution of these issues will avoid protracted and expensive litigation by clarifying the propriety and/or scope of the Preliminary Injunction that could relieve the parties from being involved in multiple proceedings and multiple appeals, including with respect to the pending Contempt Motion. *See Total Benefit Servs., Inc. v. Grp. Ins. Admin., Inc.*, U.S. Dist. LEXIS 4362, at *5 (E.D. La. Mar. 25, 1993) ("Resolution of these issues could materially affect the outcome of the litigation. . . . Furthermore, a favorable resolution of these issues will avoid protracted and expensive litigation.").

Finally, public policy and due process support Mr. Dondero's request. If leave to appeal is not granted, Mr. Dondero's rights may be permanently impacted by the injunction and he will have no remedy at law or any opportunity for any court to review the bankruptcy court's preliminary injunction order. "As a policy matter, the rulings of a non-Article III bankruptcy court should not be more insulated from appellate

review than the rulings of an Article III district court." *In re Reserve Prod.*, 190 B.R. 287, 290 (E.D. Tex. 1995).

IV. Alternatively, this Court should treat this mandamus as an ordinary appeal and dissolve the injunction or remand.

Alternatively, if this Court determines that mandamus is not warranted or that it possesses appellate jurisdiction under section 1292(a), Mr. Dondero requests this Court treat this mandamus petition as an ordinary appeal. Mr. Dondero hereby incorporates by reference this mandamus as his timely and proper Notice of Appeal under Rule 3 and opening brief. *United Airlines*, 406 F.3d at 923; Fed. R. App. P. 3; Fed. R. App. P. 4. Mr. Dondero is hereby timely providing notice of his appeal to the District Court's February 11, 2021 order to this Court via his mandamus petition. *Id.*; *Smith v. Barry*, 502 U.S. 244 (1992).[12]

For all the reasons briefed herein, this Court should reverse the District Court's order and opinion and dissolve the injunction; alternatively, it should remand with instructions to exercise jurisdiction over the appeal under section 1292(a). *See United Airlines*, 406 F.3d at

[12] The information for Respondent's counsel can be found in the Certificate of Interested Persons.

923 (treating mandamus as appeal, exercising appellate jurisdiction under § 1292(a), and reversing and rendering judgment dissolving injunction from bankruptcy court).

PRAYER

Petitioner James Dondero respectfully requests that this Court issue a writ of mandamus or other order dissolving the preliminary injunction against Mr. Dondero or, alternatively, directing the District Court to accept and consider the merits of Mr. Dondero's appeal of the preliminary injunction under 28 U.S.C. § 1292(a) or (b). Mr. Dondero further requests any further relief to which he is entitled in equity or law.

Dated: March 8, 2021

Respectfully submitted,

/s/ D. Michael Lynn

D. Michael Lynn
Texas State Bar No. 12736500
Matthew D. Stayton
Texas State Bar No. 24033219
John T. Wilson, IV
Texas State Bar No. 24033344
Bryan C. Assink
Texas State Bar No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: michael.lynn@bondsellis.com
Email: matt.stayton@bondsellis.com
Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR PETITIONER JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on March 8, 2021, the foregoing document was served via first class mail upon counsel for Respondent Highland Capital Management, L.P. as listed below, and by the Court's CM/ECF system on all parties requesting or consenting to such service.

Jeffrey Pomerantz
Ira Kharasch
John Morris
Gregory Demo
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Melissa Hayward
Zachery Annable
Hayward PLLC
10501 N. Central Expy, Ste. 106
Dallas, TX 75231

I further certify that a copy of the foregoing document is being provided to the Honorable Ada Brown.

/s/ Matthew Stayton
Matthew Stayton

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App.P. 21(d) because this document contains 5,364 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook font.

/s/ Matthew Stayton
Matthew Stayton

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

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**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No. 20-03190**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S OBJECTIONS AND RESPONSES
TO DEBTOR'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Plaintiff, by and through its attorneys of record, John A. Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067.

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, made applicable to this proceeding through Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure,

Dondero Ex. 18

Defendant James Dondero ("Defendant") hereby serves the following objections and responses to Debtor's First Request for Production of Documents Directed to James Dondero (the "Request").

Dated: December 31, 2020

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
John T. Wilson, IV
State Bar I.D. No. 24033344
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: michael.lynn@bondsellis.com
Email: john@bondsellis.com
Email: john.wilson@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on December 31, 2020, a true and correct copy of the foregoing document was served via email on counsel for the Plaintiff as listed below.

Jeffrey Pomerantz
John Morris
Ira Kharasch
Greg Demo
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com
Email: jmorris@pszjlaw.com
Email: ikharasch@pszjlaw.com
Email: gdemo@pszjlaw.com

/s/ Bryan C. Assink
Bryan C. Assink

REQUEST FOR PRODUCTION

Request No. 1: For the period November 1, 2020, to the present, all Communications between You and Andrew Clubok.

Response: Defendant objects to this request as being overbroad and irrelevant to the relief requested in Plaintiff's Complaint. Defendant further objects to this request to the extent it seeks to discover communications and documents that are confidential and/or privileged under the attorney-client privilege, this Court's mediation order, and/or Rule 408 of the Federal Rules of Evidence. Defendant further objects to this request to the extent it calls for the production of documents or communications no longer in Defendant's possession, custody, or control. Specifically, Defendant no longer has access to all communications and documents that may have been exchanged during the period from November 1, 2020 through December 10, 2020.

Subject to the foregoing objections and without waiver of same, and in accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 2: For the period November 1, 2020, to the present, all Documents provided to or received from Andrew Clubok.

Response: Defendant objects to this request as being overbroad and irrelevant to the relief requested in Plaintiff's Complaint. Defendant further objects to this request to the extent it seeks to discover communications and documents that are confidential and/or privileged under the attorney-client privilege, this Court's mediation order, and/or Rule 408 of the Federal Rules of Evidence. Defendant further objects to this request to the extent it calls for the production of documents or communications no longer in Defendant's possession, custody, or control. Specifically, Defendant no longer has access to all communications and documents that may have been exchanged during the period from November 1, 2020 through December 10, 2020.

Subject to the foregoing objections and without waiver of same, and in accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 3: All Communications between You and any person employed by the Debtor.

Response: In accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 4: All Documents provided to or received from any person employed by the Debtor.

Response: In accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 5: All Documents and Communications concerning MultiStrat.

Response: Defendant objects to this request as being overbroad and irrelevant to the relief requested in Plaintiff's Complaint. Defendant further objects to this request to the extent it seeks to discover communications and documents that are confidential and/or privileged under the attorney-client privilege, this Court's mediation order, and/or Rule 408 of the Federal Rules of Evidence. Defendant further objects to this request to the extent it seeks or calls for documents or communications concerning the allegations underlying the proof of claim filed by The Dugaboy Investment Trust, as there is a pending proceeding through which discovery concerning those allegations should be conducted.

Subject to the foregoing objections and without waiver of same, and in accordance with the Court's email ruling of December 28, 2020, Defendant is producing all responsive documents in his possession, custody, or control.

Request No. 6: All Documents and Communications that You intended to introduce into evidence at the Hearing.

Response: While Defendant has not at this time determined which documents and communications, if any, he intends to introduce into evidence at the Hearing, all such responsive documents are being produced or will be timely produced before the Hearing in accordance with the Local Bankruptcy Rules.

From: Bryan Assink
To: Jeff Pomerantz; "John A. Morris"; Ira Kharasch; Gregory V. Demo
Cc: "Michael Lynn"; John Bonds; John Wilson
Subject: Highland Capital Management - Dondero"s Production in Response to Debtor"s Document Request
Date: Thursday, December 31, 2020 9:24:00 AM
Attachments: Dondero Response to Debtor"s First RFP 12.31.20.pdf
Dondero 000001 - 000108.pdf

Counsel:

Attached please find (i) James Dondero's Objections and Responses to Debtor's First Request for Production; and (ii) documents responsive to Debtor's document requests, which are designated Dondero 000001 – 000108.

While Mr. Dondero believes that certain of the documents and communications responsive to the request and included in this production may be privileged or confidential, including under the Court's mediation order and Rule 408, he is producing them to ensure compliance with the Court's ruling of December 28 and to alleviate the need for the parties and the Court to incur additional time on these discovery requests.

Best,
Bryan

Bryan C. Assink, Associate
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton St. | Suite 1000 | Fort Worth, Texas 76102
office 817.779.4297 | fax 817.405.6902
bryan.assink@bondsellis.com

Dondero Ex. 19