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Counsel for Highland Capital Management, L.P.

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

CHARITABLE DAF FUND, L.P., AND CLO
HOLDCO LTD.,

Plaintiffs,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,
HIGHLAND HCF ADVISOR, LTD., AND
HIGHLAND CLO FUNDING, LTD.,

Defendants.

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Case No. 3:21-cv-00842-B

**APPENDIX IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT, L.P.’S
MOTION TO DISMISS THE COMPLAINT**



Highland Capital Management, L.P., a defendant in the above-captioned case (the “Debtor” or “Highland”), hereby files this appendix in support of *Highland Capital Management, L.P.’s Motion to Dismiss the Complaint* (the “Motion”).¹

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Appx.	Description
1	HarbourVest 2017 Global Fund L.P. Proof of Claim No. 143, HarbourVest 2017 Global AIF L.P., Proof of Claim No. 147, HarbourVest Dover Street IX Investment L.P., Proof of Claim No. 150, HV International VIII Secondary L.P., Proof of Claim No. 153, HarbourVest Skew Base AIF L.P., Proof of Claim No. 154, and HarbourVest Partners L.P., Proof of Claim No, 149.
2	<i>Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> [Docket No. 1625]
3	<i>Settlement Agreement and Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.</i> [Docket No. 1631-1]
4	<i>Objection to the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest</i> , [Docket No. 1697]
5	<i>Objection to the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> [Docket No. 1706]
6	<i>Objection to HarbourVest Settlement</i> [Docket No. 1707]
7	Deposition Transcript of Michael Pugatch, January 21, 2021
8	<i>Omnibus Reply in Support of Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> [Docket No. 1731]
9	Hearing Transcript, January 14, 2021
10	<i>Order Approving Debtor’s Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> [Docket No. 1788]
11	<i>Original Complaint</i> , Case No. 21-00842-B, Docket No. 1 (N.D. Tex. Apr. 12, 2001)
12	Deposition Transcript of Grant Scott, January 21, 2021
13	Members Agreement, November 15, 2017

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

Dated: May 27, 2021

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

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Counsel for Highland Capital Management, L.P.

APPENDIX 1

CLAIM 143

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas
(State)

Case number 19-34054

**Official Form 410
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** HarbourVest 2017 Global Fund L.P.
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest 2017 Global Fund L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A. Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
See Annex

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020
MM / DD / YYYY

/s/Michael Pugatch
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch
First name Middle name Last name

Title Managing Director - Company: HarbourVest 2017 Global Fund L.P., by Harb

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____

Email _____



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor: 19-34054 - Highland Capital Management, L.P. District: Northern District of Texas, Dallas Division		
Creditor: HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. Phone: 2129096000 Phone 2: Fax: Email: eweisgerber@debevoise.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: HarbourVest 2017 Global Fund L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. Phone: 6173483773 Phone 2: Fax: E-mail: agoren@harbourvest.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor:		Amends Claim: No Acquired Claim: No
Basis of Claim: See Annex	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: See Annex		Includes Interest or Charges: None
Has Priority Claim: No		Priority Under:
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No		Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:
Submitted By: Michael Pugatch on 08-Apr-2020 4:40:16 p.m. Eastern Time Title: Managing Director - Company: HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its Gen Partner Company: by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

ANNEX TO PROOF OF CLAIM

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global Fund L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

CLAIM 147

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas
(State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** HarbourVest 2017 Global AIF L.P.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest 2017 Global AIF L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A. Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
See Annex

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
 Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
- Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____
- Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. \$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No
 Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020
MM / DD / YYYY

/s/Michael Pugatch
 Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch
First name Middle name Last name

Title Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager
 Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____

Email _____



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor: 19-34054 - Highland Capital Management, L.P. District: Northern District of Texas, Dallas Division		
Creditor: HarbourVest 2017 Global AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. Phone: 2129096000 Phone 2: Fax: Email: eweisgerber@debevoise.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: HarbourVest 2017 Global AIF L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 Phone: 6173483773 Phone 2: Fax: E-mail: agoren@harbourvest.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: See Annex	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: See Annex	Includes Interest or Charges: None	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Michael Pugatch on 08-Apr-2020 4:49:59 p.m. Eastern Time Title: Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative Company: Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

ANNEX TO PROOF OF CLAIM

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

CLAIM 150

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas
(State)

Case number 19-34054

**Official Form 410
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** HarbourVest Dover Street IX Investment L.P.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773
Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
See Annex

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020
MM / DD / YYYY

/s/Michael Pugatch
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch
First name Middle name Last name

Title Managing Director-Company: HarbourVest Dover Street IX Investment L.P.,

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____

Email _____



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor: 19-34054 - Highland Capital Management, L.P. District: Northern District of Texas, Dallas Division		
Creditor: HarbourVest Dover Street IX Investment L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. Phone: 2129096000 Phone 2: Fax: Email: eweisgerber@debevoise.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: HarbourVest Dover Street IX Investment L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. Phone: 6173483773 Phone 2: Fax: E-mail: agoren@harbourvest.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor:		Amends Claim: No Acquired Claim: No
Basis of Claim: See Annex	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: See Annex		Includes Interest or Charges: None
Has Priority Claim: No		Priority Under:
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No		Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:
Submitted By: Michael Pugatch on 08-Apr-2020 4:59:00 p.m. Eastern Time Title: Managing Director-Company: HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners Ireland Limited, its Alter Company: Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

ANNEX TO PROOF OF CLAIM

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Dover Street IX Investment L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

CLAIM 153

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas
(State)

Case number 19-34054

**Official Form 410
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** HV International VIII Secondary L.P.
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
HV International VIII Secondary L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A. Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
See Annex

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
 Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- | | |
|---|---|
| <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | Amount entitled to priority
\$ _____ |
| <input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | \$ _____ |
| <input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | \$ _____ |
| <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | \$ _____ |
| <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | \$ _____ |
| <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. | \$ _____ |

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No
 Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
 I am the creditor's attorney or authorized agent.
 I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
 I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020
MM / DD / YYYY

/s/Michael Pugatch
 Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch
First name Middle name Last name

Title Managing Director-Company: HV International VIII Secondary L.P., by HII

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____

Email _____



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor: 19-34054 - Highland Capital Management, L.P. District: Northern District of Texas, Dallas Division		
Creditor: HV International VIII Secondary L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. Phone: 2129096000 Phone 2: Fax: Email: eweisgerber@debevoise.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: HV International VIII Secondary L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. Phone: 6173483773 Phone 2: Fax: E-mail: agoren@harbourvest.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor:		Amends Claim: No Acquired Claim: No
Basis of Claim: See Annex	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: See Annex		Includes Interest or Charges: None
Has Priority Claim: No		Priority Under:
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No		Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:
Submitted By: Michael Pugatch on 08-Apr-2020 5:16:54 p.m. Eastern Time Title: Managing Director-Company: HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, Company: by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

ANNEX TO PROOF OF CLAIM

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HV International VIII Secondary L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

CLAIM 154

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas
(State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** HarbourVest Skew Base AIF L.P.
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest Skew Base AIF L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A. Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)
Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
See Annex

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
 Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
- Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____
- Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. \$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No
 Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020
MM / DD / YYYY

/s/Michael Pugatch
 Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch
First name Middle name Last name

Title Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest

Company Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investme
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____

Email _____



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor: 19-34054 - Highland Capital Management, L.P. District: Northern District of Texas, Dallas Division		
Creditor: HarbourVest Skew Base AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. Phone: 2129096000 Phone 2: Fax: Email: eweisgerber@debevoise.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: HarbourVest Skew Base AIF L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 Phone: 6173483773 Phone 2: Fax: E-mail: agoren@harbourvest.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: See Annex	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: See Annex	Includes Interest or Charges: None	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Michael Pugatch on 08-Apr-2020 5:11:50 p.m. Eastern Time Title: Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative Inv Company: Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

ANNEX TO PROOF OF CLAIM

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Skew Base AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition* (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings

in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

CLAIM 149

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas
(State)

Case number 19-34054

**Official Form 410
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** HarbourVest Partners L.P. on behalf of funds and accounts under management
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773
Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
See Annex

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
 Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
- Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____
- Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. \$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No
 Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020
MM / DD / YYYY

/s/Michael Pugatch
 Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch
First name Middle name Last name

Title Managing Director

Company HarbourVest Partners L.P., on behalf of funds and accounts under manage
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor: 19-34054 - Highland Capital Management, L.P. District: Northern District of Texas, Dallas Division		
Creditor: HarbourVest Partners L.P. on behalf of funds and accounts under management Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. Phone: 2129096000 Phone 2: Fax: Email: eweisgerber@debevoise.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: HarbourVest Partners L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. Phone: 6173483773 Phone 2: Fax: E-mail: agoren@harbourvest.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor:		Amends Claim: No Acquired Claim: No
Basis of Claim: See Annex		Last 4 Digits: No Uniform Claim Identifier:
Total Amount of Claim: See Annex		Includes Interest or Charges: None
Has Priority Claim: No		Priority Under:
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No		Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:
Submitted By: Michael Pugatch on 08-Apr-2020 5:06:59 p.m. Eastern Time Title: Managing Director Company: HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its Gen Partner		

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

ANNEX TO PROOF OF CLAIM

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Partners L.P. on behalf of funds and accounts under management (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant manages investment funds that are limited partners in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third*

Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor, as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

APPENDIX 2

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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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.	§	

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

¹ The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (“Highland” or the “Debtor”), files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement agreement (the “Settlement Agreement”),² a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion (“Morris Dec.”), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”). In support of this Motion, the Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9019 of the Bankruptcy Rules.

² All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the official committee of unsecured creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s case to this Court [Docket No. 186].³

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the “Settlement Order”).

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor’s general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor’s chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

³ All docket numbers refer to the docket maintained by this Court.

B. Overview of HarbourVest's Claims

10. HarbourVest's claims against the Debtor's estate arise from its \$80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of \$300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.⁴

⁴ Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

C. Summary of HarbourVest’s Factual Allegations

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry (“Mr. Terry”), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. (“Acis LP”). Through Acis LP, Mr. Terry managed Highland’s CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. (“Acis Funding”).

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately \$8 million (the “Arbitration Award”) on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to “Highland CLO Funding, Ltd.” (“HCLOF”) and “swapped out” Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the “Structural Changes”). The Debtor allegedly told HarbourVest that it made these changes because of the “reputational harm” to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the “Highland” CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to “denude”

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the “Transfers”), on January 24, 2018, Terry moved for a temporary restraining order (the “TRO”) from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the “Acis Bankruptcy Case”). The Bankruptcy Court overruled the Debtor’s objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the “Acis Trustee”). A long sequence of events subsequently transpired, all of which relate to HarbourVest’s claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").
- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.
- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."
- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.
- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to” the Operative Documents “and any and all legal and equitable claims or causes of action relating to the forgoing harm.” *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest’s Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the “Claim Objection”).

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the “Fraud Claims”), U.S. State and Federal Securities Law Claims (the “Securities Claims”), violations of the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the “HarbourVest Claims”).

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than \$300 million (based largely on a theory of treble damages).

E. Settlement Discussions

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

F. Summary of Settlement Terms

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;⁵
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of \$45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of \$35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of \$45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

⁵ The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately \$22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

BASIS FOR RELIEF REQUESTED

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. See *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. See *In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound discretion of the bankruptcy court.” See *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, “with a focus on comparing ‘the terms of the compromise with the rewards of litigation.’” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: “(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise.” *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court’s TRO that restricted HCLOF’s ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor’s estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's \$300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 266326)
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-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
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Zachery Z. Annable
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Tel: (972) 755-7100
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Counsel for the Debtor and Debtor-in-Possession

APPENDIX 3

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

WHEREAS, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

WHEREAS, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

WHEREAS, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

WHEREAS, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

WHEREAS, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

WHEREAS, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

WHEREAS, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”) and together with the HarbourVest Response, the “HarbourVest Pleadings”);

WHEREAS, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

WHEREAS, the Debtor disputes the HarbourVest Claims;

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).¹

WHEREAS, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

WHEREAS, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

2. **Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

¹ All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (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 "HarbourVest Released Claims").

(b) Upon the Effective Date, 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 HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest 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 in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to 11 U.S.C. § 363), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a “Support Termination Event”): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

HARBOURVEST

HarbourVest Partners L.P.
Attention: Michael J. Pugatch
One Financial Center
Boston, MA 02111
Telephone No. 617-348-3712
E-mail: mpugatch@harbourvest.com

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

Debevoise & Plimpton LLP
Attention: M. Natasha Labovitz, Esq.
919 Third Avenue
New York, NY 10022
Telephone No. 212-909-6649
E-mail: nlabovitz@debevoise.com

THE DEBTOR

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
Telephone No.: 972-628-4100
Facsimile No.: 972-628-4147
E-mail: jpseeryjr@gmail.com

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

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910
Facsimile No.: 310-201-0760
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

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IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: /s/ James P. Seery, Jr.
Name: James P. Seery, Jr.
Its: CEO/CRO

HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

Exhibit A

TRANSFER AGREEMENT
FOR ORDINARY SHARES OF
HIGHLAND CLO FUNDING, LTD.

This Transfer Agreement, dated as of December [REDACTED], 2020 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
 - d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
 - e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.
2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:
- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
 - b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
 - c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
 - d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
 - e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:
 - a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
 - b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
 - c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.
4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).
5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):
 - a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
 - b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

 - c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.
6. Miscellaneous.
 - a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

[Remainder of Page Intentionally Blank]

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

TRANSFeree:

HCMLP Investments, LLC

By: Highland Capital Management, L.P.

Its: Member

By: _____

Name: James P. Seery, Jr.

Title: Chief Executive Officer

PORTFOLIO MANAGER:

Highland HCF Advisor, Ltd.

By: _____

Name: James P. Seery, Jr.

Title: President

FUND:

Highland CLO Funding, Ltd.

By: _____

Name:

Title:

[Additional Signatures on Following Page]

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

TRANSFERORS:

HarbourVest Dover Street IX Investment L.P.

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: _____

Name: Michael Pugatch

Title: Managing Director

HV International VIII Secondary L.P.

By: HIPEP VIII Associates L.P.
Its General Partner

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global AIF L.P.

By: HarbourVest Partners (Ireland) Limited
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest Skew Base AIF L.P.

By: HarbourVest Partners (Ireland) Limited
Its Alternative Investment Fund
Manager

By: HarbourVest Partners L.P.
Its Duly Appointed Investment
Manager

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global Fund L.P.

By: HarbourVest 2017 Global Associates L.P.
Its General Partner

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

Exhibit A

<u>Transferee Name</u>	<u>Number of Shares</u>	<u>Percentage</u>
HarbourVest Dover Street IX Investment L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global AIF L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global Fund L.P.	[REDACTED]	[REDACTED]
HV International VIII Secondary L.P.	[REDACTED]	[REDACTED]
HarbourVest Skew Base AIF L.P.	[REDACTED]	[REDACTED]

APPENDIX 4

D. Michael Lynn
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State Bar I.D. No. 02589100
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ATTORNEYS FOR JAMES DONDERO

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

IN RE: §
§
HIGHLAND CAPITAL MANAGEMENT, § **Case No. 19-34054**
L.P., §
§
Debtor. § **Chapter 11**

**JAMES DONDERO’S OBJECTION TO DEBTOR’S MOTION FOR ENTRY
OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST**
[Relates to Docket No. 1625]

James Dondero (“Respondent”), a creditor, indirect equity security holder, and party in interest in the above-captioned bankruptcy case, hereby files this Objection to *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154)* [Docket No. 1625] (the “Motion”) filed by Highland Capital Management, L.P. (the “Debtor”). Through the Motion, the Debtor seeks approval of its compromise with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”) pursuant to Rule 9019 of the Federal



Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this objection, Respondent respectfully represents as follows:

I. INTRODUCTION

1. Under Bankruptcy Rule 9019, the Bankruptcy Court is tasked with making an independent judgment on the merits of a proposed settlement to ensure that the proposed settlement is “fair, equitable, and in the best interest of the estate.”¹ While Respondent recognizes the Debtor’s efforts in arranging a settlement, there are at least three significant issues with the terms of the settlement that merit denial of the Motion: (i) the proposed settlement is not reasonable or in the best interest of the estate given the weakness of the HarbourVest Claim (as hereinafter defined); (ii) the proposed settlement is a blatant attempt to purchase votes in support of Debtor’s plan by giving HarbourVest a significant claim to which it would not otherwise be entitled; and (iii) the proposed settlement seeks to improperly classify the HarbourVest Claim² in two separate classes in order to gerrymander an affirmative vote on its reorganization plan. Moreover, the proposed settlement does not satisfy the factors for approval fixed by case law. On information and belief, Debtor’s CEO/CRO, Mr. Seery, has previously asserted on multiple occasions that the HarbourVest Claim had no value and that the Debtor could resolve such claim for no more than \$5 million. While Respondent and Mr. Seery have had a number of disagreements in this case, Respondent agrees with Mr. Seery’s initial conclusion that the HarbourVest Claim is substantially without merit. Respondent understands that any settlement will not necessarily provide the best possible outcome for the Debtor, but in this instance the proposed settlement far exceeds the bounds of reasonableness and, on its face, is an attempt by the Debtor to purchase votes in favor

¹ See *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

² While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. See Claim Nos. 143, 147, 149, 150, 153, and 154.

of confirmation of its Plan. Given the Debtor's prior positions as to the merits of HarbourVest Claim it is necessary for the Court to closely scrutinize the settlement to determine why the Debtor now believes granting HarbourVest a net claim of nearly \$60 million³ resulting from HarbourVest's investment in a non-debtor entity (which was and is managed by a non-debtor) to be in the best interest of the estate. Upon close scrutiny, Respondent believes the Court will find that the proposed settlement is not reasonable or in the best interest of the estate and the Motion therefore should be denied.

II. BACKGROUND

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in Delaware.

4. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].

5. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

³ The proposed settlement provides that HarbourVest shall receive an allowed general unsecured (Class 8) claim in the amount of \$45 million and an allowed subordinated general unsecured (Class 9) claim in the amount of \$35 million. As part of the settlement, HarbourVest will then transfer its entire interest in Highland CLO Funding, Ltd. ("HCLOF") to an entity to be designated by the Debtor. The Debtor states that the value of this interest is approximately \$22 million as of December 1, 2020.

6. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, 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.

7. On July 16, 2020, this Court entered an order authorizing the Debtor to employ James P. Seery, Jr. as Chief Executive Officer and Chief Restructuring Officer of the Debtor. *See* Docket No. 854.

8. On April 8, 2020, HarbourVest filed Proofs of Claim Numbers 143, 149, 149, 150, 153, and 154 (collectively, the "HarbourVest Claim")⁴.

9. On July 30, 2020, the Debtor filed *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the "Debtor Objection"), which contained an objection to the HarbourVest Claim.

10. On September 11, 2020, HarbourVest filed *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "HarbourVest Response").

11. On December 23, 2020, the Debtor filed the Motion seeking approval of a proposed settlement of the HarbourVest Claim under Rule 9019. Docket No. 1625.

III. LEGAL STANDARD

12. The merits of a proposed compromise should be judged under the criteria set forth in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). *TMT Trailer* requires that a compromise must be "fair and equitable." *TMT Trailer*, 390

⁴ While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. *See* Claim Nos. 143, 147, 149, 150, 153, and 154.

U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir. 1984). The terms “fair and equitable,” commonly referred to as the “absolute priority rule,” mean that (i) senior interests are entitled to full priority over junior interests; and (ii) the compromise is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

13. In determining whether a proposed compromise is fair and equitable, a Court should consider the following factors:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

TMT Trailer, 390 U.S. at 424.

14. In considering whether to approve a proposed compromise, the bankruptcy judge “may not simply accept the trustee’s word that the settlement is reasonable, nor may he merely ‘rubber stamp’ the trustee’s proposal.” *In re Am. Res. Corp.*, 841 F.2d 159, 162 (7th Cir. 1987). “[T]he bankruptcy judge must apprise himself of all facts necessary to evaluate the settlement and make an informed and independent judgment about the settlement.” *See TMT Trailer*, 390 U.S. at 424, 434.

15. While the trustee’s business judgment is entitled to a certain deference, “business judgment is not alone determinative of the issue of court approval.” *See In re Endoscopy Ctr. of S. Nev., LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011). Further, the business judgment rule does not provide a debtor with “unfettered freedom” to do as it wishes. *See In re Pilgrim’s Pride Corp.*, 403 B.R. 413, 426 (Bankr. N.D. Tex. 2009) (“[A]s a fiduciary holding its estate in trust and responsible

to the court, a debtor in possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.”). The Court must conduct an “intelligent, objective and educated evaluation”⁵ of the proposed settlement “to ensure that the settlement is fair, equitable, and in the best interest of the estate and creditors.” *See In re Mirant Corp.*, 348 B.R. 725, 739 (Bankr. N.D. Tex. 2006) (quoting *Conn. Gen. Life Ins. Co. v. Foster Mortgage Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995)).

IV. ARGUMENT AND AUTHORITIES

16. As discussed in detail below, there are three significant issues with the terms of the settlement that merit denial of the Motion: (i) the proposed settlement is not reasonable or in the best interest of the estate given the weakness of the HarbourVest Claim; (ii) the proposed settlement is a blatant attempt to purchase votes in support of Debtor’s plan by giving HarbourVest a substantial claim to which it is not entitled; and (iii) the proposed settlement seeks to improperly classify HarbourVest’s one claim in two separate classes in order to gerrymander an affirmative vote on its reorganization plan. For these and certain additional reasons as discussed below, the Motion should be denied.

A. Through its Claim, HarbourVest Seeks to Revisit this Court’s Orders in the Acis Case

17. As an initial matter, through its proofs of claim, HarbourVest appears to be second guessing the Court’s judgment in the Chapter 11 case of Acis Capital Management, LP and Acis Capital Management GP, LLC (collectively, “Acis”) and seeking to revisit the Court’s orders entered in that case years ago. HarbourVest appears to be arguing that the TRO and injunction

⁵ *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (“To assure a proper compromise the bankruptcy judge, must be apprised of all the necessary facts for an intelligent, objective and educated evaluation. He must compare the terms of the compromise with the likely rewards of litigation.”).

entered in the Acis case that prevented redemptions or resets in the CLOs are now the root cause of the decrease in value of its investment in HCLOF.

18. Specifically, the claim states that HarbourVest incurred “financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF.”⁶

19. Essentially, HarbourVest is saying that the orders entered in the Acis case did not actually protect the investors and their investments, but instead were a triggering cause for the alleged diminution in value of its investment in HCLOF. Nevertheless, even though the value of HCLOF dropped dramatically only after the Effective Date of Acis’s Plan, years later and despite the lack of Debtor involvement in managing HarbourVest’s investment, HarbourVest now seeks to impute liability to the Debtor through a flimsy narrative designed to recoup investment losses unrelated to the Debtor and for which the Debtor owed HarbourVest no duty.

20. That HarbourVest now, years later, seeks to revisit this Court’s Acis orders raises a number of issues, including those as to HarbourVest’s involvement (or lack thereof) in the Acis case, whether the orders, Plan, or Confirmation Order in the Acis case may bar some of the relief requested by HarbourVest here, and questions related to the merits of the HarbourVest Claim and the legal grounds allegedly supporting it.

⁶ See Proof of Claim 143, para. 3 (“Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF.”).

B. The HarbourVest Claim Lacks Merit and the Proposed Settlement is Not Reasonable

21. Based on the HarbourVest Claim and its filed response to the Debtor's objection, Respondent believes that the HarbourVest claim is meritless and the proposed settlement is not reasonable, fair and equitable, or in the best interest of the estate.

22. First, the proposed settlement is concerning particularly because HarbourVest's bare bones proof of claim contains very little in terms of allegations of specific conduct against the Debtor that would give rise to a \$60 million claim against this estate. While HarbourVest's response to the Debtor's claim objection is lengthy, it contains very little in real substance supporting its right to such a claim against the estate. The response also omits a number of key facts that are relevant and potentially fatal to its claim for damages against the Debtor's estate. Among them is the fact that Acis (and thereafter Reorganized Acis), along with Mr. Joshua Terry, managed HarbourVest's investment for years after it was made.⁷ Despite this fact, HarbourVest's alleged damages appear to be based largely on the difference between the value of its initial investment at confirmation of Acis's Plan and the current value of the investment—which amount was directly determined by the performance of the CLOs that Acis managed during this time.⁸ Neither the claim nor the response directly address the implications of Acis's management of the CLOs during the period following HarbourVest's investment. Nor does HarbourVest address or discuss performance of the CLOs, the market forces that may have caused HarbourVest's investment to lose value, or other factors influencing the current value of its investment. The

⁷ See, e.g., HarbourVest Proof of Claim 143, p. 5 (“The Claimant is a limited partner in one of the Debtor's managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018.”).

⁸ See HarbourVest Response, Docket No. 1057, para. 40 (“HarbourVest has been injured from the Investment: not only has the Investment failed to accrue value, its value plummeted. The Investment's current value is far less than HarbourVest's initial contribution.”).

speculative nature of the damages and the lack of specificity of the HarbourVest Claim and the role of Acis in the loss of value to HarbourVest all call into question the reliability of the allegations and the legal basis for the claim amount awarded in the settlement.

23. Also absent from Harbourvest's papers is any discussion of any contract or agreement between (i) HarbourVest and the Debtor; and (ii) any agreement that was executed in conjunction with HarbourVest's initial investment. While the proof of claim references a number of agreements, there is no explanation in the claim or in HarbourVest's response to the Debtor's claim objection of how these agreements give rise to liability against the *Debtor*. For example, neither the claim nor the HarbourVest Response (which includes more than 600 pages of attachments) attach *any* written agreement between HarbourVest and **any other party**. While HarbourVest has alleged a number of claims sounding in tort, many of those claims cannot exist absent a contract or other express relationship between the parties. Moreover, the terms of the relevant contracts themselves likely contain a number of provisions that may call into question Debtor's liability or would be otherwise relevant to merits of the HarbourVest Claim. For example, HarbourVest in its papers appears to assert or imply that the Debtor made a number of false or fraudulent representations to solicit HarbourVest's investment, but then fails to discuss or even identify the applicable agreements it alleges it was induced into signing in connection with its investment (this despite the substantial value of the investment when the Acis plan was confirmed).

24. Given these issues, among many others, the HarbourVest Claim is unsustainable both from a liability and damages standpoint and there are many very high hurdles HarbourVest would have to clear in seeking to prove liability against the Debtor and in proving its damages. For a long period of time, its investment was managed by Acis and the investment's performance was directly tied to Acis's inadequate performance as portfolio manager. Further, the value of

HarbourVest's investment is also directly tied to various market forces that may have impacted its value. The HarbourVest Claim is largely lacking in relevant facts and omits much salient information, such as who it contracted with in connection with its investment, the terms of such agreements, who controlled its investment during the entire period from November 2017 to the present, and the performance of its investment during the last two years. Given these issues, HarbourVest will be unable to demonstrate a causal connection between any conduct of the Debtor and the alleged damages it suffered from a reduction in value of its investment.

25. Because of the speculative nature of the HarbourVest Claim, and the fact that very little pleading or litigation has occurred, the proposed settlement in granting such a large claim is unreasonable, not fair and equitable, and not in the best interest of the estate. The lack of pending litigation, narrowing of threshold questions, and lack of detail in HarbourVest Claim make it impossible to determine whether the huge claim awarded under the proposed settlement is justified under the facts. Accordingly, the Motion should be denied.

C. The Proposed Settlement is an Improper Attempt by the Debtor to Purchase Votes in Support of its Plan and the Separate Classification of the HarbourVest Claim Constitutes Gerrymandering in Violation of 11 U.S.C. § 1122

26. The proposed settlement is a flagrant attempt by the Debtor to purchase votes in support of its Plan by giving HarbourVest a significant claim to which it has not shown itself entitled. Moreover, the separate classification of the HarbourVest Claim into two separate classes constitutes impermissible gerrymandering in violation of section 1122 of the Bankruptcy Code. The proposed settlement essentially gives HarbourVest a claim it is not entitled to in exchange for votes in two separate classes. This is not a proper basis for a settlement and the Court should deny the Motion.

27. Section 1122 of the Bankruptcy Code provides as follows:

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122.

28. “Chapter 11 requires classification of claims against a debtor for two reasons. Each class of creditors will be treated in the debtor's plan of reorganization based upon the similarity of its members' priority status and other legal rights against the debtor's assets. Proper classification is essential to ensure that creditors with claims of similar priority against the debtor's assets are treated similarly.” *In re Greystone III Joint Venture*, 995 F.2d 1274, 1277 (5th Cir. 1991).

29. “Section 1122 consequently must contemplate some limits on classification of claims of similar priority. A fair reading of both subsections suggests that ordinarily substantially similar claims, those which share common priority and rights against the debtor’s estate, should be placed in the same class.” *Id.* at 1278.

30. The Fifth Circuit has stated that there is “one clear rule that emerges from otherwise muddled caselaw on § 1122 claims classification: thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan.” *Id.* at 1279. The Court observed:

There must be some limit on a debtor’s power to classify creditors in such a manner. . . . Unless there is some requirement of keeping similar claims together, nothing would stand in the way of a debtor seeking out a few impaired creditors (or even one such creditor) who will vote for the plan and placing them in their own class.

In re Greystone III Joint Venture, 995 F.2d 1274, 1279 (5th Cir. 1991) (quoting *In re U.S. Truck Co.*, 800 F.2d 581, 586 (6th Cir. 1986)).

31. Here, the HarbourVest settlement and the classification of the HarbourVest Claim under the Plan blatantly violate the Fifth Circuit’s “one rule” concerning the classification of claims under section 1122. To the extent that HarbourVest even has a legitimate claim, not only should its claim be classified together with other unsecured creditors, its claim should be classified solely in one class. To allow the Debtor to do otherwise as proposed is improper gerrymandering in order to obtain a consenting class in express violation of section 1122.

D. There Are Other Reasons for the Court to Closely Scrutinize the Proposed Settlement that May Warrant Denial of the Motion

32. There are a number of other reasons for the Court to closely scrutinize the proposed settlement that may warrant denial of the Motion.

33. First, the granting to HarbourVest of a claim in the total amount of \$80 million potentially allows HarbourVest to achieve a significant windfall at the expense of other creditors and equity holders. The Debtor has asserted numerous times that the estate is solvent and, for this reason, the purported subordinated claim of \$35 million (if allowed and approved) may be worth just as much as its general unsecured claim. This is a huge figure in this case, outshined only by the Redeemer Committee, which has an actual arbitration award obtained after lengthy litigation. By contrast, the HarbourVest Claim contains only a few paragraphs of generalized allegations that essentially argue that the Debtor’s alleged actions related to the Acis bankruptcy, and this Court’s orders in the Acis case, are a “but for” cause of the loss of its investment. While the HarbourVest Response is lengthy, it lacks necessary details for the Court to determine whether HarbourVest *may* be entitled to the relief requested by the Motion. The other significant creditors in this case—*inter alia*, Redeemer, UBS and Acis—all had pending claims that were litigated. Nor is HarbourVest a trade creditor, vendor, or other contract counter-party of the Debtor. The HarbourVest Claim is thus uniquely situated in this case and, given the size and the nature of its

claims, should invite close scrutiny. Under these facts, the potential allowance of an \$80 million claim (less the value of its share in HCLOF, which may suffer by continued management by Acis) against the estate for an investment which was not held or managed by the Debtor would be a huge undue windfall.

34. Second, the Motion states that HarbourVest will vote its proposed allowed Class 8 (proposed at \$45 million) and Class 9 (proposed at \$35 million) claims in support of confirmation. There are at least two potential issues with this proposal. First, the deadline for parties to submit ballots was January 5, 2021, and as of the close of business on January 5, the HarbourVest Claim has not been allowed for voting purposes.⁹ Second, the Motion and proposed settlement agreement state that the HarbourVest Claim will be allowed for voting purposes only as a general unsecured claim in the amount of \$45 million. It is unclear how HarbourVest can, or would be authorized to, vote its purported Class 8 and 9 Claims in support of the Plan after the voting deadline and when the settlement provides only for a voting claim in Class 8.

35. Third, while the Motion addresses the factor of probability of success in the litigation, it does not discuss in detail the cost of doing so in relation to the amount to be paid to HarbourVest under the settlement or the likelihood that the Debtor will succeed in the litigation. In addition, unlike the claims filed by Acis and UBS, the HarbourVest Claim does not arise from pending litigation. At this point, relatively little litigation has occurred and the parties have not addressed threshold issues that might dramatically narrow the scope of the HarbourVest Claim. Rule 9019 requires an analysis as to whether the probability of success in litigation is outweighed by the consideration achieved under the settlement. *See In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (The Court must “compare the terms of the compromise with the likely rewards

⁹ The hearing on the 3018 and 9019 motions are set concurrently with confirmation.

of litigation.”). Given the excessive amount to be paid under the settlement and the weakness of the HarbourVest Claim, this factor weighs in favor of denial of the Motion.

36. Fourth, it is unclear from the settlement papers whether the transfer by HarbourVest of its interest in HCLOF to the Debtor or an entity the Debtor designates will cause the value of the investment to be received by the Debtor’s estate. Further, the interest of HCLOF being conveyed under the proposed settlement may be subject to the Acis plan injunction, which could potentially prevent the Debtor’s estate from realizing the value of this interest. In the event the Court is inclined to approve the settlement, the order should make clear that the available value of the investment should be realized by the Debtor’s estate.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court enter an order denying the Motion and providing Respondent such other and further relief to which he may be justly entitled.

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Dated: January 6, 2021

Respectfully submitted,

/s/ D. Michael Lynn

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ATTORNEYS FOR JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink

APPENDIX 5

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

IN RE: * Chapter 11
*
* Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P. *
*
Debtor *

**OBJECTION TO DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

The Dugaboy Investment Trust and Get Good Trust (jointly, “Objectors”), submit this Objection for the purpose of objecting to the *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Dkt. #1625] (the “Motion”) filed by Highland Capital Management, L.P. (the “Debtor”). Through the Motion, the Debtor seeks approval of its compromise with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”) pursuant to Rule 9019 of the



Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this objection, Objectors respectfully represent as follows:

I. INTRODUCTION

1. Objectors recognize that Courts favorably view settlements and, as a matter of course, generally approve settlements as being in the best interest of the bankruptcy estate. The settlement proposed herein, however, is different than other settlements inasmuch as it represents a 180 degree departure from the Debtor’s own analysis of the Claim of HarbourVest and the fact that the settlement is tied to HarbourVest approving the Debtor’s plan. Little or no information is provided by the Debtor as to why its initial analysis was flawed and what information or legal principal it discovered to change a zero claim into a massive claim that will have a significant impact on the recovery to creditors.

II. BACKGROUND

2. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in Delaware.

4. On December 4, 2019, the venue of this case was transferred. [Dkt. #186].

5. On July 16, 2020, this Court entered an order authorizing the Debtor to employ James P. Seery, Jr. as Chief Executive Officer and Chief Restructuring Officer of the Debtor. [See Dkt. #854].

6. On April 8, 2020, HarbourVest filed Proofs of Claim Numbers 143, 149, 149, 150, 153, and 154 (collectively, the “HarbourVest Claim”)¹.

7. On July 30, 2020, the Debtor filed *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Dkt. #906] (the “Debtor Objection”), which contained an objection to the HarbourVest Claim.

8. On September 11, 2020, HarbourVest filed *HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Dkt. #1057] (the “HarbourVest Response”).

9. The Debtor, in its *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. #1473 pgs. 40-41], described its position relative to the HarbourVest Claim as follows:

The Debtor intends to **vigorously** defend the HarbourVest Claims on various grounds The HarbourVest Entities invested approximately \$80,000,000.00 in HCLOF but seek an allowed claim in excess of 300 million dollars (after giving effect to treble damages for the alleged RICO violations)

10. On December 23, 2020, the Debtor filed the Motion seeking approval of a proposed settlement of the HarbourVest Claim under Rule 9019. [Dkt. # 1625].

11. The proposed settlement provides HarbourVest with the following:

- a. An allowed, general unsecured claim in the amount of \$45,000,000.00 [Dkt. #1625 pg. 9 pp.f]; and

¹ While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. See Claim Nos. 143, 147, 149, 150, 153, and 154.

- b. A \$35,000,000 claim in Class 9 [Dkt. #1625 pg. 9 pp.f].
12. An integral element of the settlement requires that HarbourVest will “support confirmation of the Debtor’s Plan including, but not limited to, voting its claims in support of the Plan.”
13. The settlement also contains a provision that HarbourVest will transfer its entire interest in HCLOF to an entity to be designated by the Debtor. It is unclear whether HarbourVest has a right to transfer the interest and secondly, what the Debtor will do with the interest [Dkt. #1625 pp.f].
14. The sole support for the Motion is the Declaration of John Morris [Dkt. #1631] which fails to account for the enormous change in the Debtor’s position between November 24, 2020 when the Disclosure Statement was approved and December 23, 2020 when the Motion was filed, a period of less than thirty (30) days.
15. The Declaration of John Morris [Dkt. #1631] also contains no information as to the potential cost of the litigation, whether HarbourVest can transfer the interest or reasons, other than conclusory reasons, as to why the settlement is beneficial to the estate. The Debtor makes the assertion that the interest it is acquiring was worth \$22,000,000.00 as of December 1, 2020 without advising as to the basis for the valuation. Is it a book value and, if not, what was the methodology employed to arrive at the valuation? The Court has no basis to evaluate the settlement without essential information as to 1) how the asset being acquired is valued; 2) can the Debtor acquire the interest; and 3) how will the Debtor bring value to the estate in connection with the interest inasmuch as the Debtor has discretion as to where to place the asset to be acquired.

A. LEGAL STANDARDS

16. The law relative to approval of motions pursuant to BR 9019 is well settled. The settlement must be fair and equitable. *See In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980). The factors the Court should consider are the following:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968).

17. Although the Debtor's business judgment is entitled to a certain deference, "business judgment" is not alone determinative of the issue of court approval. *See In re Endoscopy Ctr. of S. Nev., LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011). However, notwithstanding the business judgment rule, a debtor does not have unfettered freedom to do what it wishes. *See In re Pilgrim's Pride Corp.*, 403 B.R. 413, 426 (Bankr. N.D. Tex. 2009) ("[A]s a fiduciary holding its estate in trust and responsible to the court, a debtor in possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.").

B. ISSUES WITH THE SETTLEMENT

18. Objectors believe that the following issues are not explained or addressed in the Motion and, thus, the Motion should be denied:

- a) The settlement represents a radical change in the Debtor's position that was set forth in its Disclosure Statement. While the Debtor asserts that its position is

based on its fear of parties' oral testimony, the size of the transactions at issue make the case a document case, as opposed to who said what, when and how. A review of the applicable documents to determine whether they support the Debtor's initial position is warranted, as opposed to stating that the case is based upon the credibility of a witness. This settlement is not the settlement of an automobile accident where the parties are disputing who ran a red light;

- b) The settlement requires HarbourVest to support and vote in favor of the Debtor's Plan. On its face this appears to be vote buying. The settlement should not be conditioned upon HarbourVest's support or non-support of the Plan and its vote in favor or against the Plan; and
- c) No information is provided as to whether the Debtor can acquire the interest in HCLOF, liquidate the interest, who will receive the interest, or how will the estate benefit from the interest to be acquired.

CONCLUSION

The settlement with HarbourVest has too many questions to be approved on the record before this Court and the parties, due to the Notice of the Motion, the holidays and the press of other litigation in this case, do not have the time to adequately investigate the propriety of the settlement.

January 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on the 8th day of January, 2021, a copy of the above and foregoing *Objection To Debtor's Motion For Entry Of An Order Approving Settlement With Harbourvest (Claim Nos. 143, 147, 149, 150, 153, 154) And Authorizing Actions Consistent Therewith* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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ATTORNEYS FOR CLO HOLDCO, LTD.

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

In re: §
§
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-SGJ
§
Debtor. § Chapter 11
§

CLO HOLDCO, LTD.'S OBJECTION TO HARBOURVEST SETTLEMENT

TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:

CLO Holdco, Ltd. ("**CLO Holdco**") respectfully files this *Objection to Harbourvest Settlement* (the "**Harbourvest Settlement Objection**") which seeks entry of an order from this Court denying the Debtor's *Motion for Entry of an Order Approving Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* (the "**Harbourvest Settlement Motion**") for the reasons stated below. In support of the Harbourvest Settlement Objection, CLO Holdco respectfully states as follows:

**I.
BACKGROUND**

A. TRANSFERRING SHARES IN HCLOF



1. CLO Holdco owns 75,061,630.55 shares, or about 49.02% of Highland CLO Funding, Ltd. ("**HCLOF**"). Other shareholders include Harbourvest 2017 Global AIF L.P., Harbourvest Global Fund L.P., Harbourvest Dover Street IX Investment L.P., and Harbourvest Skew Base AIF L.P., and HV International VIII Secondary L.P. (collectively, "**Harbourvest**"). Harbourvest owns approximately 49.98% of HCLOF. The remaining 1% is owned by the Debtor and a five other investors.

2. HCLOF is governed by a *Members Agreement Relating to the Company* dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco (the "**Member Agreement**"). A copy of that agreement is attached hereto as **Exhibit A**.

3. Section 6 of the Member Agreement addresses the "Transfer or Disposals of Shares." MEMBER AGREEMENT, § 6. The Member Agreement places strict restrictions on the sale or transfer of shares to entities other than the initial Member's own affiliates. *See id.* at §§ 6.1, 6.2. Before a Member can transfer its interests to a party other than its own affiliates it must: (i) obtain the prior written consent of the Portfolio Manager; and (ii) "offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter" (the "**Right of First Refusal**"). *Id.* As further stated in section 6.2 of the Member Agreement, "The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred." *Id.* at § 6.2.

B. THE HARBOURVEST SETTLEMENT

4. On December 23, 2020, the Debtor filed the Harbourvest Settlement Motion. On the following day, the Debtor filed a copy of the Settlement Agreement referenced in the

Harbourvest Settlement Motion (the "**Settlement Agreement**") [Dkt. No. 3]. In the Settlement Agreement, Harbourvest represents and warrants that it is authorized to transfer its interest in HCLOF to the Transferee, HCMLP Investments, LLC (the "**Transferee**"). SETTLEMENT AGREEMENT, Ex. A. § 3. Further, the Transferee and Debtor agree to be bound by the terms and conditions of the Member Agreement. *Id.* at § 1.c.

5. In exchange for conveniently classified allowed claims under the Debtor's *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "**Plan**") [Dkt. No. 1472], Harbourvest agrees to vote in favor of the Plan and to transfer all of its interests in HCLOF to the Transferee. SETTLEMENT AGREEMENT, § 1.

6. As detailed below, CLO Holdco objects to the Harbourvest Settlement Motion because Harbourvest has no authority to transfer its interests in HCLOF without first complying with the Right of First Refusal. The only way to effectuate such a transfer without first providing other members the Right of First Refusal is an intentionally inaccurate interpretation of the Member Agreement's contractual provisions that would render specific passages redundant and meaningless. More simply put, the only way Harbourvest and the Debtor could effectuate the Settlement Agreement is by violating fundamental tenets of contract interpretation.

II. **ARGUMENTS AND AUTHORITIES**

A. CONTRACT INTERPRETATION – AVOIDING REDUNDANCIES AND SURPLUS LANGUAGE

7. The Fifth Circuit recognizes fundamental tenets of contract interpretation, and notes that "contracts should be read as a whole, viewing particular language in the context in which it appears. *Woolley v. Clifford Chance Rogers & Wells, L.L.P.*, 51 F. App'x 930 (5th Cir. 2002) (citing Restatement (Second) of Contracts § 202 (1981)). The Fifth Circuit has applied substantially the same tenets of contract interpretation across the laws of various jurisdictions, and consistently reasons that "[a]ll parts of the agreement are to be reconciled, if possible, in order to avoid an

inconsistency. A specific provision will not be set aside in favor of a catch-all clause." *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 947 (5th Cir. 1981) (internal citations omitted); and *see Hawthorne Land Co. v. Equilon Pipeline Co., LLC*, 309 F.3d 888, 892–93 (5th Cir. 2002); *Luv N' Care, Ltd. v. Grupo Rimar*, 844 F.3d 442, 447 (5th Cir. 2016); *Wooley*, 51 F.Appx. at 930.

8. Reconciliation of terms that would otherwise render other parts of a contract redundant is fundamental to proper contract interpretation. *Hawthorne Land*, 309 F.3d at 892-93. As the Fifth Circuit explained in *Hawthorne Land*, "each provision of a contract must be read in light of the other provisions so that each is given the meaning suggested by the contract as a whole. A contract should be interpreted so as to avoid neutralizing or ignoring a provision or treating it as surplusage." *Id.* (internal citations and quotations omitted). In other words, provisions of a contract should be read to create harmony, not internal inconsistencies, redundancies, and unnecessary surplus language. *See, e.g., Luv N' Care*, 844 F.3d at 447 (overturning district court on appeal by interpreting contract in manner that eliminated perceived redundancy).

B. ANALYZING THE MEMBER AGREEMENT

9. Section 6.1 of the Member Agreement will almost certainly be cited by the Debtor and Harbourvest as authority for their entry into the Settlement Agreement, regardless of whether other Members or the Portfolio Manager consent. It states, in pertinent part, that:

No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio Manager...

MEMBER AGREEMENT, § 6.1. Harbourvest will likely stress that under the terms of the Member Agreement, it can transfer its interests so long as the transfer is to "an Affiliate of an initial Member." Indeed, the Debtor will no doubt point out to this Court that Harbourvest is

conveniently transferring its interests in HCLOF to an Affiliate of the Debtor, and that the Debtor is an initial Member listed in the Member Agreement.

10. Section 6.1, however, must be read in the context of the Member Agreement, and in conjunction with the transfer restrictions found in section 6.2. Read together it is clear that the consent exception allowing a transfer in 6.1 was intended to allow a Member to transfer its shares to *its* own Affiliate, without required consents and effectuating a Right of First Refusal. Doing so would allow inter-company transfers within a corporate structure without the need for complicated procedures. Applying Fifth Circuit precedent, this interpretation fits squarely within the agreement and gives weight to the terms of section 6.2 of the Member Agreement, as explained below.

(i) Surplusage – Specific Allowance of Transfers by CLO Holdco to Debtor Affiliates

11. Recall that both CLO Holdco and the Debtor are initial Members to the Member Agreement. MEMBER AGREEMENT, p. 3. Section 6.2 of the Member Agreement states, in pertinent part, that "Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, *in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal*) a Member must first..." comply with the Right of First Refusal. *Id.* at § 6.2 (emphasis added). The italicized language above is important for two reasons: (i) it specifically enumerates that CLO Holdco can transfer its interests to Debtor Affiliates without having to pursue the Right of First Refusal; and (ii) it allows only limited transfers between Members, as opposed to between a Member and an Affiliate of an initial Member.

12. If, as the Debtor and Harbourvest will likely argue, Members are allowed to transfer their interests to any Affiliates of any other initial Members, there is absolutely no need for the Member Agreement to specifically authorize CLO Holdco to transfer its interests to the Debtor's Affiliates. Per Fifth Circuit fundamentals of contract interpretation, that purported redundancy

should not be discarded as mere surplusage, and the Member Agreement should be interpreted in a manner that gives weight to that provision. *Hawthorne Land*, 309 F.3d at 892-93.

13. If the Member Agreement is read to literally allow all "Transfers to Affiliates of an initial Member" there would be no reason to expressly set forth allowed transfers between specific Members and other Member's Affiliates. If the Member Agreement sought to list all allowed transfers between Members and their Affiliates, it should have similarly noted that any Member could transfer its interest to any Harbourvest Member entity, as each Harbourvest Member entity is an Affiliate of the other Harbourvest Member entities. Alternatively, if the specific enumeration of CLO Holdco and the Highland Principals' transfer rights was surplusage, it would presumably have listed other parties' rights, or had inclusive language such as "including but not limited to" or "for example." The Member Agreement lacks such language and, as a result, should be interpreted in a manner that both gives weight to the specific provision while reconciling other provisions of the contract.

(ii) Absurd Results – Disparate Transfer Rights Between Members

14. Note that the Member Agreement does not generally allow a transfer of interests from Member to Member unless specifically enumerated. Section 6.2 specifically allows only CLO Holdco and the Highland Principals to make transfers to other Members, but those other Members include only the Debtor or another Highland Principal. MEMBER AGREEMENT, § 6.2. It does not allow the Debtor to transfer interests to any Member, and does not expressly allow any Member, other than limited transfers by CLO Holdco and the Highland Principals, to transfer interests to any other Member. *Id.* For instance, if the Debtor wished to transfer its interests to CLO Holdco, it would first have to offer all of the other Members their Right of First Refusal. *Id.*

15. Similarly, if Harbourvest wished to transfer its interest to CLO Holdco, it could not do so without first providing the Right of First Refusal to all other Members. *Id.* As noted above,

however, allowing a Member to transfer its interest to an Affiliate of any initial Member would allow *all* of the Members to transfer their interests to any Harbourvest Member entity, as the Harbourvest Members are Affiliates of each other. Given the specific enumeration of CLO Holdco and the Highland Principals' rights to inter-Member transfers, it would be inconsistent to expand that specific provision to allow all transfers by all Members to any Harbourvest entity without first providing a Right of First Refusal.

16. Such a reading would lead to absurd results. It would grant similarly situated Members profoundly disparate rights under the agreement, and could easily lead to manipulation. For instance, because the Harbourvest Members are technically Affiliates of an initial Member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer. No other Member could do that. For instance, if CLO Holdco wished to acquire other Members' interests, the transferring member (including Harbourvest) would have to offer a Right of First Refusal in *every instance*. To resolve that potential disparate treatment—though CLO Holdco and Harbourvest own nearly identical ownership interests in HCLOF—CLO Holdco would have to form an Affiliate and acquire interests through the Affiliate. That simply *cannot* be the intended result of the Member Agreement.

17. Instead, the Member Agreement must be read to require Harbourvest to provide a Right of First Refusal to the other Members of HCLOF before transferring its interests to either the Debtor or the Transferee.

C. THE RIGHT OF FIRST REFUSAL IN BANKRUPTCY

18. Most cases addressing third party rights of first refusal in bankruptcy involve the assignment of leases and landlords' rights of first refusal. In those cases, courts analyze whether such a provision in the *debtor's* contract is a defacto restriction on assignment that may be excised

from the agreement. This case is very different. Here, it is a creditor that owes a right of first refusal to another non-debtor entity.

19. Even so, at least one court has issued telling commentary on a bankruptcy court's ability to excise provisions of a bargained-for contract, stating "A bankruptcy court's authority to excise a bargained for element of a contract is questionable and modification of a nondebtor contracting party's rights is not to be taken lightly." *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 51-52 (Bankr. M.D.N.C. 2003) (citing *In re Joshua Slocum Ltd.*, 922 F.2d 1081, 1091 (3d Cir. 1991)). CLO Holdco was unable to find any case that would allow a bankruptcy court to invalidate or otherwise excise a third party's right of first refusal in what largely amounts to a non-debtor contract.

20. As the Member Agreement requires Harbourvest to provide a Right of First Refusal to the non-Debtor Members under section 6.2 of the Agreement, and such Members have 30 days to review and determine whether to purchase their pro-rata shares offered by Harbourvest, Harbourvest lacks contractual authority to enter into the Settlement Agreement.

D. HARBOURVEST'S LACK OF AUTHORITY PRECLUDES ENFORCEMENT OF SETTLEMENT

21. Harbourvest has not completed its conditions precedent to the transfer of its interest to Transferee under the Member Agreement. As detailed above, and in section 6.2 of the Agreement, Harbourvest must effectuate the Right of First Refusal before it can transfer its interests in HCLOF. MEMBER AGREEMENT, § 6.2. Harbourvest is, in essence, bound by the condition precedent of effectuating the Right of First Refusal before it is authorized under the Member Agreement to enter into the Settlement Agreement.

22. Courts should not enforce a settlement agreement where a party has a condition precedent to entry into the agreement and fails to satisfy that condition. *In re De La Fuente*, 409 B.R. 842, 846 (Bankr. S.D. Tex. 2009). As noted in part in *De La Fuente*, the court would not recognize

or enforce a settlement where the parties were subject to conditions precedent before the settlement could be effective, and the conditions precedent were not satisfied. This Court should similarly deny Harbourvest's proposed settlement, as it would deny the Members' Right of First Refusal, which is the benefit of their bargain under the Member Agreement.

III.
PRAYER FOR RELIEF

WHEREFORE, CLO Holdco requests that this Court grant the Objection and enter an order denying the Harbourvest Settlement Motion.

DATED: January 8, 2020

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

By: /s/ John J. Kane

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State Bar No. 04566100
John J. Kane
State Bar No. 24066794

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ATTORNEYS FOR CLO HOLDCO, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020, a true and correct copy of the foregoing CLO Holdco Objection was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the United States Trustee at Lisa.L.Lambert@usdoj.gov and upon the following parties:

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/s/ John J. Kane

John J. Kane

APPENDIX 7

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

IN RE:

CHAPTER 11

CASE NO.

HIGHLAND CAPITAL 19-34054-
MANAGEMENT, L.P. SGJLL

Debtor.

Confidential - Under Protective Order

REMOTE DEPOSITION OF
MICHAEL PUGATCH
Zoom Videoconference
01/11/2021
1:07 P.M. (EDT)

REPORTED BY: AMANDA GORRONO, CLR
CLR NO. 052005-01
JOB NO. 188591

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 01/11/2021</p> <p>3 1:07 P.M. (EDT)</p> <p>4</p> <p>5</p> <p>6 REMOTE ORAL DEPOSITION OF MICHAEL</p> <p>7 PUGATCH, held virtually via Zoom</p> <p>8 Videoconferencing, pursuant to the</p> <p>9 Federal Rules of Civil Procedure before</p> <p>10 Amanda Gorrono, Certified Live Note</p> <p>11 Reporter, and Notary Public of the State</p> <p>12 of New York.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:(Via Remote)</p> <p>3 PACHULSKI STANG ZIEHL & JONES</p> <p>4 Attorneys for Debtor</p> <p>5 780 Third Avenue</p> <p>6 New York, New York 10017</p> <p>7 BY: JOHN MORRIS, ESQ.</p> <p>8 HAYLEY WINOGRAD, ESQ.</p> <p>9</p> <p>10 BONDS ELLIS EPPICH SCHAFFER JONES</p> <p>11 Attorneys for Jim Dondero</p> <p>12 420 Throckmorton Street</p> <p>13 Fort Worth, Texas 76102</p> <p>14 BY: JOHN WILSON, ESQ.</p> <p>15 BRYAN ASSINK, ESQ.</p> <p>16</p> <p>17 DEBEVOISE & PLIMPTON</p> <p>18 Attorneys for HarbourVest</p> <p>19 919 Third Avenue</p> <p>20 New York, New York 10022</p> <p>21 BY: ERICA WEISGERBER, ESQ.</p> <p>22 M. NATASHA LABOVITZ, ESQ.</p> <p>23 EMILY HUSH, ESQ.</p> <p>24 DANIEL STROIK, ESQ.</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S: (Via Remote)</p> <p>3 KANE RUSSELL COLEMAN & LOGAN</p> <p>4 Attorneys for CLO Holdco Limited</p> <p>5 Bank of America Plaza</p> <p>6 901 Main Street</p> <p>7 Dallas, Texas 75202</p> <p>8 BY: JOHN KANE, ESQ.</p> <p>9</p> <p>10 HELLER, DRAPER, HAYDEN, PATRICK, & HORN</p> <p>11 Attorneys for The Dugaboy Investment</p> <p>12 Trust and the Get Good Trust</p> <p>13 650 Poydras Street</p> <p>14 New Orleans, Louisiana 70130</p> <p>15 BY: DOUGLAS DRAPER, ESQ.</p> <p>16</p> <p>17 LATHAM & WATKINS</p> <p>18 Attorney For UBS</p> <p>19 885 Third Avenue</p> <p>20 New York, New York</p> <p>21 BY: SHANNON MCLAUGHLIN, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 A P P E A R A N C E S: (Via Remote)</p> <p>3 KING & SPALDING</p> <p>4 Attorney for Highland CLO Funding, Ltd.</p> <p>5 1180 Peachtree Street, NE</p> <p>6 Atlanta, Georgia 30309</p> <p>7 BY: MARK MALONEY, ESQ.</p> <p>8</p> <p>9</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 ALIZA GOREN, ESQ.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1</p> <p>2 INDEX</p> <p>3</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">WITNESS</td> <td style="width: 33%;">EXAMINATION BY</td> <td style="width: 33%;">PG</td> </tr> <tr> <td>4 MICHAEL PUGATCH</td> <td>MR. WILSON</td> <td>10, 148</td> </tr> <tr> <td></td> <td>MR. KANE</td> <td>122</td> </tr> <tr> <td>5 MS. WEISGERBER</td> <td></td> <td>147</td> </tr> </table> <p>6</p> <p>7 EXHIBITS</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">EXHIBIT</td> <td style="width: 33%;">DESCRIPTION</td> <td style="width: 33%;">PAGE</td> </tr> <tr> <td>9 Exhibit 1</td> <td>Proof of Claim 143 filed</td> <td>16</td> </tr> <tr> <td>10</td> <td>4/08/2020 nine pages.....</td> <td></td> </tr> <tr> <td>11 Exhibit 2</td> <td>Proof of Claim 149 filed</td> <td>17</td> </tr> <tr> <td>12</td> <td>4/08/2020 nine pages.....</td> <td></td> </tr> <tr> <td>13 Exhibit 3</td> <td>Declaration of Michael</td> <td>18</td> </tr> <tr> <td>14</td> <td>Pugatch in Support of</td> <td></td> </tr> <tr> <td>15</td> <td>Motion of HarbourVest</td> <td></td> </tr> <tr> <td>16</td> <td>Pursuant to Rule 3018(a)...</td> <td></td> </tr> <tr> <td>17 Exhibit 4</td> <td>Member Agreement 28 pages..</td> <td>21</td> </tr> <tr> <td>18 Exhibit 5</td> <td>HarbourVest Response to</td> <td>22</td> </tr> <tr> <td>19</td> <td>Debtor's First Omnibus</td> <td></td> </tr> <tr> <td>20</td> <td>Objection 617 pages.....</td> <td></td> </tr> <tr> <td>21 Exhibit 6</td> <td>Offering Memorandum 122</td> <td>61</td> </tr> <tr> <td>22</td> <td>pages.....</td> <td></td> </tr> <tr> <td>23 Exhibit 7</td> <td>Share Subscription and</td> <td>63</td> </tr> <tr> <td>24</td> <td>Transfer Agreement 31</td> <td></td> </tr> <tr> <td>25</td> <td>pages.....</td> <td></td> </tr> </table>	WITNESS	EXAMINATION BY	PG	4 MICHAEL PUGATCH	MR. WILSON	10, 148		MR. KANE	122	5 MS. WEISGERBER		147	EXHIBIT	DESCRIPTION	PAGE	9 Exhibit 1	Proof of Claim 143 filed	16	10	4/08/2020 nine pages.....		11 Exhibit 2	Proof of Claim 149 filed	17	12	4/08/2020 nine pages.....		13 Exhibit 3	Declaration of Michael	18	14	Pugatch in Support of		15	Motion of HarbourVest		16	Pursuant to Rule 3018(a)...		17 Exhibit 4	Member Agreement 28 pages..	21	18 Exhibit 5	HarbourVest Response to	22	19	Debtor's First Omnibus		20	Objection 617 pages.....		21 Exhibit 6	Offering Memorandum 122	61	22	pages.....		23 Exhibit 7	Share Subscription and	63	24	Transfer Agreement 31		25	pages.....		<p style="text-align: right;">Page 7</p> <p>1</p> <p>2 Exhibit 8 E-mail 08/15/2017..... 68</p> <p>3 Exhibit 9 11/29/2017 E-mail with 79</p> <p>4 cover letter Highland</p> <p>5 Capital Management.....</p> <p>6 Exhibit 10 2004 Examination of 83</p> <p>7 Investor in Highland CLO</p> <p>8 Funding Ltd. 10/10/2018....</p> <p>9 Exhibit 11 Declaration of John A. 109</p> <p>10 Morris in Support of the</p> <p>11 Debtor's Motion For Entry</p> <p>12 of an Order Approving</p> <p>13 Settlement With</p> <p>14 Harbourvest (Claim Nos.</p> <p>15 143, 147, 149, 150, 153,</p> <p>16 154) and Authorizing</p> <p>17 Actions, 82 pages.....</p> <p>18</p> <p>19</p> <p>20 REQUESTS</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">21 DESCRIPTION</td> <td style="width: 33%;">PG</td> </tr> <tr> <td>22 Transcript be marked Confidential</td> <td>10</td> </tr> <tr> <td>23 under the Protective Order.....</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	21 DESCRIPTION	PG	22 Transcript be marked Confidential	10	23 under the Protective Order.....		24		25	
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<p style="text-align: right;">Page 8</p> <p>1</p> <p>2 MR. WILSON: I'm John Wilson</p> <p>3 with the firm of Bonds Ellis Eppich</p> <p>4 Schafer Jones LP. And I represent Jim</p> <p>5 Dondero.</p> <p>6 MR. MORRIS: John Morris and</p> <p>7 Hayley Winograd of Pachulski Stang</p> <p>8 Ziehl & Jones for the Debtor.</p> <p>9 MS. WEISGERBER: Erica</p> <p>10 Weisgerber from Debevoise & Plimpton</p> <p>11 for HarbourVest.</p> <p>12 MR. KANE: John Kane of Kane</p> <p>13 Russell Coleman & Logan, for CLO</p> <p>14 Holdco Limited.</p> <p>15 MR. DRAPER: Douglas Draper of</p> <p>16 Heller Draper & Horn, for The Dugaboy</p> <p>17 Investment Trust and the Get Good</p> <p>18 Trust.</p> <p>19 MS. McLAUGHLIN: Shannon</p> <p>20 McLaughlin from Latham & Watkins LLP</p> <p>21 for UBS.</p> <p>22 MR. MALONEY: Mark Maloney from</p> <p>23 King & Spalding, on behalf of Highland</p> <p>24 CLO Funding Limited.</p> <p>25 MS. WEISGERBER: I'm joined on</p>	<p style="text-align: right;">Page 9</p> <p>1</p> <p>2 the line by my colleagues from</p> <p>3 Debevoise, Natasha Labovitz and Emily</p> <p>4 Hush, and Aliza Goren from HarbourVest</p> <p>5 is on the line, as well.</p> <p>6 MR. WILSON: As a preliminary</p> <p>7 matter, the witness' counsel has</p> <p>8 produced some documents to us that</p> <p>9 they've requested be subject to the</p> <p>10 confidentially order or a brief</p> <p>11 protective order entered at Document</p> <p>12 Number 382, in this case.</p> <p>13 And she's also requested that</p> <p>14 all counsel and participants in this</p> <p>15 deposition agree to be bound by the</p> <p>16 terms of that order, because some of</p> <p>17 the documents that were produced are</p> <p>18 stamped "confidential," and they want</p> <p>19 to maintain that confidentially.</p> <p>20 Do we have an agreement of all</p> <p>21 counsel and participants on the</p> <p>22 deposition to be bound by the terms of</p> <p>23 that agreed protective order?</p> <p>24 (All agreed.)</p> <p>25 MS. WEISGERBER: Okay. I think</p>																																																																												

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1 Confidential - Pugatch
 2 that was everyone. Thank you all for
 3 confirming. And the deposition will
 4 be marked "confidential" until and
 5 unless HarbourVest designates the
 6 testimony otherwise.
 7 MR. WILSON: And that's fine.
 8 (Whereupon, a request for
 9 Transcript be marked Confidential
 10 under the Protective Order was made.)
 11 MICHAEL PUGATCH,
 12 called as a witness, having been
 13 first duly affirmed by a Notary Public of
 14 the State of New York, was examined and
 15 testified as follows:
 16 EXAMINATION
 17 BY MR. WILSON:
 18 Q. All right. Mr. Pugatch, how do
 19 you pronounce your name? I'm sorry.
 20 A. Yep, you've got it. Pugatch.
 21 Q. Pugatch. Okay. Can you state
 22 your full name for the record?
 23 A. Yeah. Michael Pugatch.
 24 Q. Okay. And you've been
 25 designated by HarbourVest to discuss some

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1 Confidential - Pugatch
 2 going to be giving answers. If at any
 3 time I ask a question that you don't
 4 understand, or we've had some problems
 5 with sometimes connectivity issues with
 6 Zoom. But yeah, any time that you don't
 7 understand my question or you didn't catch
 8 it, I'll be happy to repeat it.
 9 Also, one thing I found with
 10 Zoom is that it's easier to talk over
 11 people. I'll try not to talk over you. I
 12 would ask that you try to ensure that I've
 13 finished asking my question before you
 14 start your answer. And I will likewise
 15 try to ensure that you've finished your
 16 answer before start my next question.
 17 And at any time during this
 18 deposition if you feel the need to take a
 19 break, that's totally okay with me. The
 20 one thing that I would ask is if I've just
 21 asked a question, that you answer the
 22 question before requesting the break.
 23 And if we have that agreement
 24 and the ground rules, then I think I'm
 25 ready to start asking you my questions.

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1 Confidential - Pugatch
 2 matters related to the 9019 motion. And
 3 specifically we asked that HarbourVest
 4 produce a witness who could talk about the
 5 negotiations of the settlement with the
 6 Debtor, and also the factual allegations
 7 underlying HarbourVest's Proof of Claim,
 8 and those described in HarbourVest's
 9 response to the claim objection, including
 10 without limitation, its investment with
 11 Acis/HCLOF in the alleged representations
 12 made by the Debtor and/or Acis/HCLOF to
 13 HarbourVest, and any and all agreements
 14 entered into between HarbourVest and any
 15 other party related to its investment.
 16 Do you agree that you're the
 17 best person to talk about these matters on
 18 behalf of HarbourVest?
 19 A. Yes. Yes.
 20 Q. Okay. Have you given a
 21 deposition before?
 22 A. I have.
 23 Q. Okay. So you understand how it
 24 works that you're under oath, and that I'm
 25 going to be asking questions and you're

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1 Confidential - Pugatch
 2 A. Sounds good.
 3 Q. What's your current address?
 4 A. 47 Wayne Road in Needham,
 5 Massachusetts.
 6 Q. Okay. And where are you located
 7 today?
 8 A. At that address.
 9 Q. Okay. That's your home address?
 10 A. Correct.
 11 Q. And is anyone in the room with
 12 you there?
 13 A. No.
 14 Q. And did you talk with anyone
 15 about your deposition today?
 16 A. Only counsel.
 17 Q. Okay. And did you go over the
 18 facts of the underlying investment and the
 19 settlement negotiations with your counsel?
 20 MS. WEISGERBER: I'm going to
 21 object on privilege grounds. He
 22 can -- he prepared for the deposition
 23 with counsel. I don't think you can
 24 inquire into specifics of the
 25 preparation.

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1 Confidential - Pugatch
 2 MR. WILSON: Okay. Well, you
 3 know, he was designated to talk about
 4 these matters, and I'm just asking if
 5 he discussed these matters with his
 6 counsel his before his testimony.
 7 That's all. I'm not asking the
 8 substance of those communications.
 9 MS. WEISGERBER: You're asking
 10 about conversations with counsel. How
 11 about you just ask if he's prepared to
 12 talk about those topics today?
 13 MR. WILSON: Okay.
 14 BY MR. WILSON:
 15 Q. Are you prepared to talk about
 16 those topics today?
 17 A. Yes.
 18 Q. Okay. Now, HarbourVest has
 19 filed several proofs of claim in this
 20 matter, and it looks like those are
 21 numbered 143 on behalf of HarbourVest,
 22 217 Global Fund L.P., and 144 HarbourVest
 23 2017 Global AIF, 149 HarbourVest Partners
 24 L.P., 150 HarbourVest Dover Street, IX
 25 Investment L.P., 153 HarbourVest -- or I'm

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 2 I'm going to submit the first
 3 exhibit. It's going to be Exhibit
 4 No. 1 to the deposition. I'm sending
 5 it by E-mail, and I'm also going to
 6 use a share screen.
 7 (Whereupon, Exhibit 1, Proof of
 8 Claim 143 filed 4/08/2020 nine pages,
 9 was marked for identification.)
 10 MR. WILSON: So this document
 11 right here is Claim Number 143 filed
 12 on April 8, 2020, and this one is
 13 filed on behalf of HarbourVest 2017
 14 Global Fund L.P.
 15 If we go down, scroll to the
 16 annex to proof of claim, it's Page 5
 17 of the document. It says that the
 18 Claimant is a limited partner in one
 19 of the Debtor's managed vehicles,
 20 Highland CLO Funding, Ltd.
 21 And I'm going to now send out an
 22 E-mail with Exhibit No. 2. I'm going
 23 to pull this Exhibit No. 2 document up
 24 on the share screen, as well. I guess
 25 that's right.

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1 Confidential - Pugatch
 2 sorry, HV International VIII Secondary
 3 L.P., and 154 HarbourVest Skew Base AIF
 4 LP.
 5 And you're here to talk on
 6 behalf of all of those entities, and you
 7 have, for purpose of this settlement and
 8 you're -- the 9019 motion, these proofs of
 9 claim are all lumped together as one
 10 claim; is that correct?
 11 MS. WEISGERBER: I'm just going
 12 to object quickly and clarify that
 13 he's not here as a 30(b)(6) witness,
 14 but he is here as someone from
 15 HarbourVest who signed those proofs of
 16 claim. So with that, I'll let you
 17 continue.
 18 A. I'll just answered the question,
 19 yes, as a representative on behalf of all
 20 of those entities. I would defer to
 21 counsel, from a legal perspective, whether
 22 these are treated as a single or separate
 23 claims.
 24 MR. WILSON: Okay. And we can
 25 move on for now.

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 2 (Whereupon, Exhibit 2, Proof of
 3 Claim 149 filed 4/08/2020 nine pages,
 4 was marked for identification.)
 5 BY MR. WILSON:
 6 Q. Can you see the official proof,
 7 official form 410 proof of claim on your
 8 screen?
 9 A. The first one that you shared?
 10 Q. I'm now on Exhibit No. 2. Is it
 11 showing up on your screen?
 12 A. No.
 13 Q. Okay. Actually, I'm sorry. Is
 14 it now showing up on your screen?
 15 A. Now, it's showing up, yep.
 16 Q. Okay. So this one is Proof of
 17 Claim 149, filed on the same date. And
 18 this one's filed on behalf HarbourVest
 19 Partners L.P. And I'm going to scroll
 20 down to the annex to proof of claim, which
 21 looks largely like the annex to the
 22 previous proof of claim we looked at.
 23 But this one says, in Paragraph
 24 No. 2, the Claimant manages investment
 25 funds that are limited partners in one of

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 2 the Debtor's managed vehicles, Highland
 3 CLO Funding, Ltd.
 4 And can you tell me why this
 5 HarbourVest Partners L.P. filed a separate
 6 proof of claim, from the entities that
 7 were investors in HCLOF?
 8 A. I would only be able to answer
 9 that, based on conversations with counsel.
 10 Q. But in any event, HarbourVest
 11 Partners L.P. did not invest in HCLOF,
 12 correct?
 13 A. Not directly on behalf of
 14 itself, no.
 15 Q. All right. I'm going to stop
 16 that share screen.
 17 MR. WILSON: And this is going
 18 to be Exhibit Number 3.
 19 (Whereupon, Exhibit 3,
 20 Declaration of Michael Pugatch in
 21 Support of Motion of HarbourVest
 22 Pursuant to Rule 3018(a), was marked
 23 for identification.)
 24 MR. WILSON: And Exhibit No. 3
 25 that I've just submitted via E-mail,

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 2 HarbourVest Partners L.P.
 3 Q. And you're the managing director
 4 of that entity?
 5 A. A managing director to that
 6 entity, yes.
 7 Q. You said "a managing director,"
 8 are there others?
 9 A. Yes.
 10 Q. Who are the others?
 11 A. There are over 50 managing
 12 directors at HarbourVest Partners LLC.
 13 Q. And are you the managing
 14 director that has charge of this
 15 particular HarbourVest investment, the one
 16 in HCLOF?
 17 A. Yes.
 18 MR. WILSON: All right. I beg
 19 your patience. I'm trying to conduct
 20 this deposition solo. I've got a lot
 21 of stuff I've got to go through. So
 22 I'll do my best to do it efficiently.
 23 But this next exhibit I'm going
 24 to submit is going to be Exhibit No.
 25 4. I'm sending it in the E-mail now.

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 2 and I'm about to put it up on the
 3 screen, is the Declaration of
 4 HarbourVest. Let me get it up here,
 5 so you can see it. This is the
 6 declaration of Michael Pugatch in
 7 support of motion of HarbourVest
 8 pursuant to Rule 3018(a).
 9 BY MR. WILSON:
 10 Q. Have you seen this document
 11 before?
 12 A. Yes.
 13 Q. And, in fact, this is your
 14 declaration; is that correct?
 15 A. Yes.
 16 Q. And at the first line of this,
 17 of Paragraph 1 says that you're the
 18 managing director of HarbourVest Partners
 19 LLC?
 20 A. Correct.
 21 Q. And how is HarbourVest Partners
 22 LLC connected to these claims?
 23 A. That is the corporate entity or
 24 managing member of all of the underlying
 25 funds that are managed on behalf of

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 2 (Whereupon, Exhibit 4, Member
 3 Agreement 28 pages, was marked for
 4 identification.)
 5 BY MR. WILSON:
 6 Q. Can you see this on your share
 7 screen?
 8 A. I can.
 9 Q. This is the Members Agreement
 10 relating to the Company.
 11 A. (Nods.)
 12 Q. I'm just going to scroll down.
 13 Okay. So this is the signature page for
 14 the HarbourVest entities that were
 15 invested in this company. And it says
 16 that you were the authorized person to
 17 sign on behalf of the first two entities:
 18 HarbourVest Dover Street, HarbourVest 2017
 19 Global, and then the next one here it says
 20 you're managing director. And here we see
 21 that HarbourVest Partners LLC.
 22 And if we scroll down, we see
 23 that you're the managing director of
 24 HarbourVest Partners LLC, again, on behalf
 25 of HV International, and that you're an

<p style="text-align: right;">Page 22</p> <p>1 Confidential - Pugatch 2 authorized person on behalf of HarbourVest 3 Skew Base. 4 So you signed all these 5 agreements on behalf of the HarbourVest 6 entities, when HarbourVest made its 7 investment in HCLOF. Would that be 8 correct? 9 A. Correct. 10 Q. Okay. Sorry that was 11 cumbersome, but I needed to get through 12 it. 13 MR. WILSON: I'm going to now 14 stop that share screen. And I'll need 15 to go to Exhibit No. 5. I'm E-mailing 16 out Exhibit No. 5 right now. 17 (Whereupon, Exhibit 5, 18 HarbourVest Response to Debtor's First 19 Omnibus Objection 617 pages, was 20 marked for identification.) 21 BY MR. WILSON: 22 Q. This is -- I'll do another share 23 screen -- this is Docket 1057 filed in the 24 Highland bankruptcy. And this is 25 HarbourVest Response to Debtor's First</p>	<p style="text-align: right;">Page 23</p> <p>1 Confidential - Pugatch 2 Omnibus Objection. 3 Did you participate in the 4 creation of this document? 5 A. Yes. 6 Q. So you had an opportunity to 7 review this document, before it was filed? 8 A. Correct. 9 Q. And you agree with the 10 statements and the positions taken in this 11 document? 12 A. I do. 13 Q. All right. So what this says in 14 Paragraph 8, that by the summer of 2017, 15 HarbourVest was engaged in preliminary 16 discussions with Highland, regarding the 17 investment. 18 First off, why was HarbourVest 19 engaged in preliminary discussions with 20 Highland? 21 A. Highland had approached 22 HarbourVest with an investment 23 opportunity. This was really borne out of 24 discussions that we had with them around a 25 couple of investment opportunities, that</p>
<p style="text-align: right;">Page 24</p> <p>1 Confidential - Pugatch 2 this opportunity with HCLOF being the one 3 that by the summer of 2017, as stated 4 here, was in, was advancing through 5 discussions. 6 Q. And which individuals at 7 Highland were you engaged in discussions 8 with? By "you," I mean HarbourVest. 9 A. Yeah, I mean, originally it was 10 through a couple of members of their 11 investor relations team. My first point 12 of contact was with Brad Eden, and then 13 subsequently progressed to a larger subset 14 of employees of Highland. 15 Q. And who on behalf of HarbourVest 16 was engaging in these discussions? 17 A. It was primarily myself, my 18 colleague, or two -- two colleagues 19 primarily, alongside myself. 20 Q. I'm sorry. I didn't catch the 21 last part. 22 A. Sorry. Myself and two other 23 colleagues primarily. 24 Q. And who are these two other 25 colleagues?</p>	<p style="text-align: right;">Page 25</p> <p>1 Confidential - Pugatch 2 A. Dustin Willard and then a more 3 junior member of the HarbourVest team. 4 Q. When you say "the HarbourVest 5 team," what does that mean? 6 A. So the broader investment team 7 and specifically in this context, the 8 secondary investment team at HarbourVest, 9 that this was an opportunity for. 10 Q. So who made the final decision, 11 on behalf of HarbourVest, to make this 12 investment? 13 A. Ultimately it was a decision 14 made by the investment committee of 15 HarbourVest. 16 Q. And who's on that investment 17 committee? 18 A. It's a four-member committee 19 comprised of managing directors within the 20 firm. 21 Q. And who are those managing 22 directors? 23 A. I don't recall at the time who 24 the members were. I can tell you the 25 members now, of that committee. It has</p>

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 2 changed or evolved over time.
 3 Q. And that committee included you?
 4 A. I was involved in the
 5 decisionmaking of that, yes, correct.
 6 Q. So you were part of the four-man
 7 committee that made this decision?
 8 A. Yes.
 9 Q. All right. I'm going to go back
 10 to what we've marked as Exhibit 3, which
 11 is your declaration. And it says in
 12 Paragraph 2, that HarbourVest is a passive
 13 minority investor in Highland CLO funds,
 14 HCLOF, and by the way, I haven't stated
 15 this before, but in this deposition if I
 16 say HCLOF, I'm going to be referring to
 17 Highland CLO funds.
 18 But it says that the vehicle is
 19 managed by Highland Capital Management,
 20 L.P.
 21 And why do you say that that
 22 vehicle was managed by Highland Capital
 23 Management, L.P.?
 24 A. I believe that is the named
 25 investment manager of HCLOF, per the

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 2 Q. And has HarbourVest received any
 3 additional dividends, since the making of
 4 this declaration?
 5 A. No, we have not.
 6 Q. Now, I want to skip down to
 7 Paragraph 3, where it says that
 8 HarbourVest expected proceeds from the
 9 original HCLOF investment were projected
 10 to exceed 135 million.
 11 Do you agree with that?
 12 A. That was the original projected
 13 value of the investment, yes.
 14 Q. Well, whose expectation was
 15 that?
 16 A. Those were figures, as I recall,
 17 that were originally provided to us by
 18 Highland to form the basis of our due
 19 diligence that we went through, and
 20 penultimately were included as part of our
 21 investment thesis in making the
 22 investment.
 23 Q. So your testimony is that
 24 Highland told you that your investment
 25 would be worth over \$135 million?

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 2 organization documents of that vehicle.
 3 Q. You believe that that was the
 4 investment manager on the organization
 5 documents, which --
 6 A. Of the various transaction
 7 documents that we entered into, in
 8 connection with our investment.
 9 Q. Would those have been the
 10 documents that you had entered on November
 11 the 15 of 2017?
 12 A. Yes.
 13 Q. Okay. It says that HarbourVest
 14 initially invested \$73,522,928 for roughly
 15 49 percent interest in HCLOF; and more
 16 specifically, that would be a 49.98
 17 percent interest in HCLOF, correct?
 18 A. Sounds right, yes.
 19 Q. Okay. And then HarbourVest
 20 contributed an additional \$4,998,501
 21 following a capital call, and it's
 22 received three dividends, each totally
 23 \$1,570,429.
 24 Is all of that correct?
 25 A. Yes.

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 2 A. Yes.
 3 MS. WEISGERBER: Objection to
 4 the form. Misstates testimony.
 5 Go ahead, Mike.
 6 A. That was, that was part of our
 7 original due diligence, on the investment
 8 opportunity.
 9 Q. When you say part of your due
 10 diligence, are you saying that the number
 11 originated from Highland or that the
 12 number originated from your due diligence
 13 operations?
 14 MS. WEISGERBER: Objection to
 15 form.
 16 A. The number originally came from
 17 Highland and formed the basis upon which
 18 we conducted due diligence on the
 19 investment opportunity.
 20 Q. And after performing due
 21 diligence, you were satisfied that that
 22 was a reasonable projection?
 23 A. Yes.
 24 Q. And what was the, what was the
 25 estimated date, in which the value of your

<p style="text-align: right;">Page 30</p> <p>1 Confidential - Pugatch 2 investment would exceed the \$135 million? 3 MS. WEISGERBER: Objection to 4 form. 5 A. I don't recall exactly. That 6 would have been over, over several years. 7 And again, this was the -- this was the 8 projected value based on the original 9 investment or the assets that were held by 10 HCLOF, at the time of our investment. 11 Q. Now, when you talk about a 12 portfolio manager -- I'm sorry, when you 13 talk about investment manager, are you 14 referring to the portfolio manager? 15 A. No. 16 Q. So what's the difference in an 17 investment manager and a portfolio 18 manager? 19 A. So in the context of this 20 investment, the investment manager. We -- 21 we had -- HarbourVest had an investment 22 with HCLOF. Highland was the investment 23 manager of HCLOF that in turn held equity 24 positions in a variety of CLOs, which had 25 various portfolio managers associated with</p>	<p style="text-align: right;">Page 31</p> <p>1 Confidential - Pugatch 2 those, all Highland affiliates. 3 Q. And so who was the portfolio 4 manager for the HarbourVest investment in 5 HCLOF? 6 MS. WEISGERBER: Objection to 7 form. 8 A. There were various underling 9 portfolio managers, depending on the 10 underlying CLO position. 11 Q. Well, who was the initial 12 portfolio manager? 13 A. So, again it would depend on 14 which underlying assets we're talking 15 about. HCLOF was a diversified portfolio 16 of multiple underlying CLO equity 17 positions, all with portfolio managers 18 that were Highland affiliates, as we 19 understood it. 20 Q. Well, I'm going to go back to 21 Exhibit 1, Paragraph 2, this says, in the 22 second sentence, "Acis Capital Management 23 GP, LLC, and Acis Capital Management, 24 L.P., together Acis, the portfolio manager 25 for HCLOF," and then it continues on,</p>
<p style="text-align: right;">Page 32</p> <p>1 Confidential - Pugatch 2 "filed for Chapter 11." 3 Is this proof of claim correct, 4 when it states that Acis Capital 5 Management GP, LLC, and Acis Capital 6 Management, L.P., were the portfolio 7 manager for HCLOF? 8 MS. WEISGERBER: Objection to 9 form. 10 A. I know that there was an issue 11 with the portfolio manager for at least 12 the Acis CLOs that were held by HCLOF. 13 Q. Well, how do you distinguish 14 between the Acis CLOs and the Highland 15 CLOs? Is that based on who was managing 16 them? 17 MS. WEISGERBER: Objection to 18 form. 19 A. Again, they were all underlying 20 investments of HCLOF. We didn't 21 distinguish the portfolio manager, if you 22 will, of those vehicles, other than again 23 they were Highland affiliates. 24 Q. But it's fair to say that Acis 25 was managing at least a portion of the</p>	<p style="text-align: right;">Page 33</p> <p>1 Confidential - Pugatch 2 HCLOF investment, correct? 3 A. Correct. The underlying 4 investments held by HCLOF, correct. 5 Q. And did anything -- from the 6 time that you -- well, let's just go to 7 the -- I think we had the members 8 agreement up a second ago. This would 9 have been Exhibit 4. 10 Yeah, right here. No. 14, 11 Highland HCF Advisor, Ltd. is listed as 12 the portfolio manager on the members 13 agreement. 14 Is that accurate, that Highland 15 HCF Advisor, Ltd. was the portfolio 16 manager? 17 MS. WEISGERBER: Objection to 18 form. Can you state as of what date 19 you're asking, Counsel? 20 MR. WILSON: Well, the date of 21 this memorandum is, it says right 22 here, 15 November 2017. 23 BY MR. WILSON: 24 Q. So as of the date November 15, 25 2017, who was the portfolio manager for</p>

<p style="text-align: right;">Page 34</p> <p>1 Confidential - Pugatch 2 this investment? 3 A. I don't recall the specific 4 names of the various entities that sat 5 below the HCLOF level or below Highland 6 Capital, as the investment manager of 7 HCLOF. 8 Q. Well, are you familiar with a 9 company called Brigade? 10 A. Yes. 11 Q. And was that company a 12 sub-manager of this investment? 13 MS. WEISGERBER: Objection to 14 form. 15 A. Not at the time of our 16 investment. 17 Q. Not at the time. Well, when did 18 the portfolio managers begin to change in 19 this investment? 20 MS. WEISGERBER: Objection to 21 form. 22 A. Do you mean subsequent to our 23 investment? 24 Q. Yes. 25 A. So as I understand it in</p>	<p style="text-align: right;">Page 35</p> <p>1 Confidential - Pugatch 2 connection with the Acis bankruptcy that 3 took place, there was a change in the 4 underlying either portfolio manager of 5 certain of the CLOs, the Acis-managed CLOs 6 or Acis-branded CLOs, I should say, and/or 7 sub-advisor of those CLOs. 8 Q. And was that at the direction of 9 the Chapter 11 trustee? 10 MS. WEISGERBER: Objection. 11 A. That's my understanding. 12 Q. And so when this investment was 13 initially made, was Highland HCF Advisor, 14 Ltd. the portfolio manager of the entire 15 investment? 16 MS. WEISGERBER: Objection to 17 form. 18 A. I don't recall the specifics 19 underneath the HCLOF entity. 20 Q. Well, there aren't any other 21 portfolio managers listed on this 22 document, that I can see. 23 Is there any place in this 24 document that you can point me to that 25 would identify another portfolio manager?</p>
<p style="text-align: right;">Page 36</p> <p>1 Confidential - Pugatch 2 MS. WEISGERBER: Objection to 3 form. The document speaks for itself. 4 A. Again, I think we may be 5 distinguishing here between portfolio 6 manager at the HCLOF level and portfolio 7 manager sub-advisor, again, I'm not sure 8 the proper terminology as it relates to 9 each of the underlying CLOs that were 10 partially owned by HCLOF. 11 Q. Well, after the Acis bankruptcy 12 was filed, and after the Chapter 11 13 trustee appointed Acis as a portfolio 14 manager of at least part of HCLOF, did 15 Highland HCF Advisor continue to serve as 16 portfolio manager? 17 MS. WEISGERBER: Objection to 18 form. 19 A. All of HarbourVest's interaction 20 was with Highland as the investment 21 manager of HCLOF. My understanding of the 22 change in those entities related to the 23 portfolio management of the underlying 24 Acis CLOs, not a change in the portfolio 25 manager, at the HCLOF level.</p>	<p style="text-align: right;">Page 37</p> <p>1 Confidential - Pugatch 2 Q. Well, Highland is listed as a 3 member under this -- Highland Capital 4 Management LLP is listed as a member under 5 this Member Agreement; is that correct? 6 MS. WEISGERBER: Objection to 7 form. 8 A. If that's what the document 9 says, yes. 10 Q. I'm going to look -- let me stop 11 my share screen for a second. 12 All right. I'm now at the top 13 of Page 5 of this Exhibit 4, where it 14 says, "Dover IX shall mean HarbourVest 15 Dover Street IX Investment L.P." 16 And Dover IX was the largest 17 single investor of the HarbourVest Group; 18 is that correct? 19 A. Correct. 20 Q. All right. I'm now going to go 21 down to Paragraph 5. I'm sorry, it's not 22 Paragraph 5. Paragraph 4, where it says 23 "Composition of Advisory Board" in 24 Paragraph 4.1, The Company shall establish 25 an Advisory Board composed of two</p>

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 2 individuals, one of whom shall be a
 3 representative of CLO Holdco and one of
 4 whom shall be a representative of
 5 Dover IX.
 6 And did this Advisory Board get
 7 created?
 8 A. I believe it was created, yes.
 9 Q. And who was the representative
 10 for CLO Holdco on the Advisory Board?
 11 A. I don't know.
 12 Q. Who was the representative for
 13 Dover IX on the Advisory Board?
 14 A. I can't recall whether it was
 15 myself or one other colleague who jointly
 16 manages this investment with me.
 17 Q. You don't recall if you were on
 18 the Advisory Board?
 19 A. The Advisory Board never met
 20 formally under its capacity as an Advisory
 21 Board.
 22 Q. Well, if you look down in
 23 Paragraph 4.3, I've got my mouse pointed
 24 here, I don't know if you can see it.
 25 About two-thirds of the way down in this

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 2 sentences above that in Paragraph 4.3 it
 3 says, The portfolio manager shall not act
 4 contrary to advice of the Advisory Board
 5 with respect to any action or
 6 determination expressly conditioned herein
 7 or in the offering memorandum on the
 8 consider approval of the Advisory Board.
 9 So the portfolio manager did not
 10 have the authority to disregard the advice
 11 of the Advisory Board; is that correct?
 12 MS. WEISGERBER: Objection to
 13 form; misstates the document.
 14 A. With respect to the limited role
 15 that the Advisory Board would have to
 16 play, yes, that would be my read.
 17 Q. Now, what is your understanding
 18 of a reset transaction?
 19 A. Has to do with a refinancing and
 20 reset of the investment period of an
 21 underlying CLO.
 22 Q. And would a reset transaction be
 23 contained within this – these actions
 24 that the Advisory Board's consent is
 25 required to approve?

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 2 paragraph it says, "The consent of the
 3 Advisory Board shall be required to
 4 approve the following actions," and then
 5 it lists a number of things.
 6 Did the Advisory Board not have
 7 to – was it not required that the
 8 Advisory Board ever meet, because they
 9 didn't take any of these actions?
 10 MS. WEISGERBER: Objection.
 11 Objection to form.
 12 A. There may have been one or two
 13 actions taken by the Advisory Board, I'm
 14 looking at the list here to see what those
 15 may even have been, during the duration of
 16 our investment; but if so, those would
 17 have been written resolutions or written
 18 consents, as opposed to any meeting that
 19 was convened amongst the entire Advisory
 20 Board.
 21 Q. Okay. And the entire Advisory
 22 Board is just two individuals, correct?
 23 A. Correct, that's my
 24 understanding.
 25 Q. Okay. And if you go up a few

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 2 A. No, it would not.
 3 MS. WEISGERBER: Objection.
 4 MR. MALONEY: Join.
 5 Q. It would not?
 6 A. It would not.
 7 Q. Well, if a reset was to be
 8 proposed, who would have the discretion to
 9 make that decision to enter a reset
 10 transaction?
 11 MS. WEISGERBER: Objection to
 12 form and foundation.
 13 MR. MALONEY: Join.
 14 A. That would be Highland as the
 15 manager of HCLOF, who owns the equity
 16 position to the underlying CLOs.
 17 Q. So you're saying that Highland
 18 would have the exclusive authority to
 19 enter a reset transaction?
 20 A. Correct.
 21 MS. WEISGERBER: Objection to
 22 form.
 23 MR. MALONEY: Join.
 24 Q. What if HarbourVest objected to
 25 a reset transaction? Would it have any

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 2 rights or remedies, in your understanding?
 3 MS. WEISGERBER: I'm going to
 4 object to form. And also just object
 5 to the extent that this is calling for
 6 legal conclusions.
 7 Mike --
 8 MR. WILSON: I've ask the
 9 witness, within his understanding of
 10 the way this investment worked.
 11 MS. WEISGERBER: If you have an
 12 understanding separate from any other
 13 conversations with counsel, Mike, you
 14 can certainly answer.
 15 A. Within my understanding,
 16 HarbourVest would not have had any ability
 17 or rights to object to a reset or for
 18 similar actions by Highland, as the
 19 manager of the HCLOF.
 20 Q. Okay. And just to, just for
 21 clarity, in 4.2 it says that, All actions
 22 taken by the Advisory Board shall be (i)
 23 by a unanimous vote of all of the members
 24 of the Advisory Board in attendance; or
 25 (ii), by written consent in lieu of a

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 2 advice.
 3 And also, Mike, you're welcome
 4 to look at the document, I think John
 5 is E-mailing you the documents as
 6 well. I don't know if you have the
 7 full document in front of you.
 8 THE WITNESS: Yeah, I can pull
 9 it up here.
 10 A. I mean, my understanding is the
 11 Advisory Board, the Advisory Board's
 12 involvement is as spelled as in Section
 13 4.3 of the agreement that you have on the
 14 screen. And that is the extent of the
 15 role that the Advisory Board would play.
 16 Q. Well, but as a practical matter,
 17 what did that entail?
 18 MS. WEISGERBER: Objection to
 19 form.
 20 A. Again, as a practical matter,
 21 the listed items, which I can't see, that
 22 are off the screen further down in 4.3 are
 23 the items that would require approval by
 24 the Advisory Board.
 25 Q. But other than those items, the

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 2 meeting signed by all of the members of
 3 the Advisory Board.
 4 And we've talked about how there
 5 were two members, one of which represented
 6 CLO Holdco and one of which represented
 7 HarbourVest, and it was your testimony
 8 that you don't recall a meeting ever being
 9 conducted that you believed that there had
 10 been some written consents issued by the
 11 Advisory Board; is that correct?
 12 MS. WEISGERBER: Objection to
 13 form.
 14 A. That is my recollection, yes.
 15 Q. I'm sorry? I didn't hear your
 16 answer.
 17 A. That is my recollection, yes.
 18 Q. Okay. So what is the Advisory
 19 Board's general function in your
 20 understanding?
 21 MS. WEISGERBER: Objection to
 22 form.
 23 You can answer, Mike, if you
 24 know, other than, you know, legal
 25 conclusions, things like that, legal

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 2 Advisory Board was not a routine part of
 3 the decision-making of the portfolio
 4 manager?
 5 MS. WEISGERBER: Objection to
 6 form.
 7 A. Not at all.
 8 Q. Did you say "not at all"?
 9 A. Not at all, no.
 10 Q. I'm going to refer back to
 11 Exhibit 5, which was Document -- or Docket
 12 1057. I'll put that back on the share
 13 screen. I wanted you to scroll, sorry.
 14 It's a long document.
 15 I want you to look at
 16 Paragraph 37, which should be on your
 17 screen. And it says that these are
 18 misrepresentations that HarbourVest
 19 alleges were made by Highland. And the
 20 first bullet point states that, "Highland
 21 never informed HarbourVest that Highland
 22 had no intention of paying the Arbitration
 23 Award and was undertaking steps to ensure
 24 that Mr. Terry could not collect on his
 25 judgment."

<p style="text-align: right;">Page 46</p> <p>1 Confidential - Pugatch 2 Now, Mr. Terry did not have an 3 arbitration award against Highland; is 4 that correct? 5 MS. WEISGERBER: Objection to 6 form and foundation. 7 A. My understanding is there was an 8 Arbitration Award, awarded for the benefit 9 of Mr. Terry. 10 Q. But that award was against Acis, 11 correct? 12 MS. WEISGERBER: Objection to 13 form. 14 A. I don't know all of the details. 15 I do know that Acis was a subsidiary of 16 Highland, and there was an arbitration 17 award that was for the benefit of 18 Mr. Terry. 19 Q. But you would agree with me that 20 if, if Highland, or I'm sorry if Mr. Terry 21 had an arbitration award against Acis, 22 then Highland would not have any 23 obligation to pay that award? 24 MR. MORRIS: Objection to the 25 form of the question.</p>	<p style="text-align: right;">Page 47</p> <p>1 Confidential - Pugatch 2 MS. WEISGERBER: Objection to 3 the form. Objection to the extent 4 that it calls for a legal conclusion. 5 I don't -- Mike, if you have a 6 layman's understanding of the answer 7 to that question, you're welcome to 8 answer. But if not, don't answer. 9 A. My understanding was Acis was a 10 controlled subsidiary of Highland's. 11 Q. Okay. Well, the next bullet 12 point says that, "Highland did not inform 13 HarbourVest that it undertook the 14 transfers to siphon assets away from Acis, 15 L.P., and that such transfers would 16 prevent Mr. Terry from collecting on the 17 Arbitration Award." 18 So if your understanding was 19 that Highland was responsible for the 20 arbitration award, then why is it relevant 21 that Highland siphoned assets away from 22 Acis, L.P.? 23 MS. WEISGERBER: Objection to 24 form. Misstates testimony. 25 Can you clarify that question,</p>
<p style="text-align: right;">Page 48</p> <p>1 Confidential - Pugatch 2 John? I think the beginning of it was 3 a little muddled. 4 BY MR. WILSON: 5 Q. Well, this objection says that 6 Highland had -- or response to objection, 7 says that Highland had no intention of 8 paying the arbitration award, but that 9 seems to conflict with the next bullet 10 point that says that it undertook 11 transfers to siphon assets away from Acis, 12 L.P., to prevent Mr. Terry from collecting 13 on the arbitration award. 14 So where were those assets being 15 siphoned to? 16 MS. WEISGERBER: Objection to 17 form and foundation. 18 If you're capable of answering 19 that question, Mike, you can. 20 A. I don't know the specific 21 details of where those assets were 22 siphoned off to, other than it was to 23 another Highland affiliate. 24 Q. The next sentence says that, 25 "Highland simply did not inform</p>	<p style="text-align: right;">Page 49</p> <p>1 Confidential - Pugatch 2 HarbourVest and represented to HarbourVest 3 that the reason for changing the portfolio 4 manager for HCLOF was because Acis was 5 toxic in the industry." 6 Do you see that? 7 A. Yes. 8 Q. And it seems when I read these 9 documents that have been filed in the 10 Highland bankruptcy, and also the Acis 11 bankruptcy, that there's a difference in 12 position as to which entity, being either 13 Highland or HarbourVest, had the belief 14 that the Acis name was toxic. Can you 15 shed any light on that? 16 MS. WEISGERBER: Objection to 17 form. 18 A. I can unequivocally say that the 19 idea to change the portfolio manager or 20 the idea that the Acis brand was toxic did 21 not come from HarbourVest. 22 Q. That was not at HarbourVest's 23 suggestion or insistence? 24 A. Absolutely not. 25 Q. Well, whose suggestion was it</p>

<p style="text-align: right;">Page 50</p> <p>1 Confidential - Pugatch 2 that the Acis name was toxic? 3 A. Somebody at Highland. 4 Q. Do you know who? 5 A. I don't recall the conversation 6 where that first came up or who said, or 7 who at Highland said that. 8 Q. But that conversation did occur 9 prior to HarbourVest's investment? 10 A. Yes. 11 Q. So Acis was previously the 12 portfolio manager for HCLOF prior to 13 November 15, 2017, and now November 17 -- 14 or 15th, 2017, the portfolio manager was 15 changed. 16 And what is HarbourVest's 17 position as to why that change in 18 portfolio manager damaged it? 19 MS. WEISGERBER: Objection; 20 form, objection to the extent it calls 21 for a legal conclusion. 22 Mike, you can answer -- 23 MR. WILSON: I'm not asking for 24 a -- with all due respect, I'm not 25 asking for a legal conclusion. I'm</p>	<p style="text-align: right;">Page 51</p> <p>1 Confidential - Pugatch 2 asking for his understanding why the 3 change in the portfolio manager 4 damaged HarbourVest. 5 MS. WEISGERBER: Same objection. 6 You can provide any 7 non-privileged answer that you have, 8 Mike, if any. 9 A. Ultimately my understanding is 10 that that change in portfolio manager and 11 the subsequent litigation between Acis, 12 Highland, and Josh Terry led to material 13 diminution in value, as it relates to the 14 underlying assets of HCLOF stemming from 15 Highland's decision not to comply with the 16 arbitration award to Mr. Terry. 17 Q. Okay. Now, if you go up to 18 Page 4 in this document, it says that on 19 October 27th, and this is Paragraph 11 20 now, "On October 27, 2017, Acis' portfolio 21 management rights for HCLOF were 22 transferred to Highland HCF"; is that 23 correct? 24 A. That sounds right, yes. 25 Q. And this is over two weeks prior</p>
<p style="text-align: right;">Page 52</p> <p>1 Confidential - Pugatch 2 to HarbourVest's investment, correct? 3 A. Correct. 4 Q. So HarbourVest had full 5 knowledge that that the portfolio manager 6 of HCLOF was being changed prior to its 7 investment, correct? 8 A. Correct. 9 MS. WEISGERBER: Objection to 10 form. 11 And just to clarify, you're 12 asking him, HarbourVest, he's 13 testifying on behalf of himself. I 14 could just take a standing objection 15 to that because I know sometimes 16 you're just saying HarbourVest meaning 17 Mike, so... 18 BY MR. WILSON: 19 Q. Okay. And just to be clear, 20 HCLOF changed its portfolio manager on 21 October 27, 2017, but after the Acis 22 bankruptcy was initiated the Chapter 11 23 trustee made changes to the portfolio 24 manager, correct? 25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 53</p> <p>1 Confidential - Pugatch 2 form, foundation. 3 A. I know there were changes 4 subsequent to the Acis bankruptcy, to the 5 underlying management of the Acis CLOs. 6 Q. All right. I'm going to go back 7 to Paragraph 37, and I want to look at 8 these next two bullet points. 9 It says that, in the third 10 bullet point, that "Highland indicated to 11 HarbourVest that the dispute with 12 Mr. Terry (which appeared on a litigation 13 schedule presented to HarbourVest during 14 diligence) would have no impact on 15 investment activities." 16 And that would be the opinion of 17 Highland, correct? 18 MS. WEISGERBER: Objection to 19 form. The opinion of Highland? Is 20 that what you meant to ask? 21 MR. WILSON: Right. 22 BY MR. WILSON: 23 Q. That's Highland expressing its 24 opinion to HarbourVest, correct? 25 MS. WEISGERBER: Objection to</p>

<p style="text-align: right;">Page 54</p> <p>1 Confidential - Pugatch 2 form. 3 A. I would just say Highland 4 presented that as facts to HarbourVest. 5 Q. Okay. And the next one, it says 6 that "Highland expressed confidence in the 7 ability of HCLOF to reset or redeem the 8 CLOs notwithstanding that Highland was 9 using HCLOF as part of its scheme to avoid 10 the pending Arbitration Award." 11 That's again an opinion, right, 12 that Highland expressed confidence in the 13 ability of HCLOF? 14 MS. WEISGERBER: Objection to 15 form. Objection to the extent it 16 calls for a legal conclusion. 17 A. Ultimately, their ability, or 18 HCLOF's ability to reset or redeem the 19 CLOs would be subject to market conditions 20 and the ability to actually affect those 21 transactions, but they expressed their, 22 you know, their belief or view in HCLOF's 23 ability to do that notwithstanding the, 24 that change in portfolio manager. 25 Q. Well, in Paragraph 39 on that</p>	<p style="text-align: right;">Page 55</p> <p>1 Confidential - Pugatch 2 same page, it says, "In reliance on 3 Highland's misrepresentations and 4 omissions, HarbourVest invested in HCLOF." 5 Now, HarbourVest is a 6 sophisticated investor, correct? 7 A. Correct. 8 Q. And if we were to go to 9 Paragraph 36, it says, right here in the 10 middle, "These facts were material: 11 indeed, HarbourVest expressed concern and 12 requested further information regarding 13 the Transfers, the Arbitration Award, and 14 their implications for HCLOF, and the 15 investment's closing date was delayed." 16 And the closing date was 17 ultimately November 15, 2017, correct? 18 A. Correct. 19 Q. What was the initial closing 20 date that had to be delayed? 21 A. I believe it was scheduled for 22 November 1st. 23 Q. So HarbourVest had full 24 knowledge of these facts that it, that it 25 lays out here forming the basis of the</p>
<p style="text-align: right;">Page 56</p> <p>1 Confidential - Pugatch 2 alleged misrepresentations, and they 3 requested further information regarding 4 those facts. 5 Did they receive any further 6 information? 7 MR. MORRIS: Objection to the 8 form of the question. 9 MS. WEISGERBER: Objection to 10 form. Misstates testimony. 11 A. We did have subsequent 12 conversations and, I believe, receive 13 subsequent information describing the 14 intent around, and the, you know, new 15 structure, pro forma structure, of the 16 action that Highland had undertaken. And 17 part of the reason for the delay in the 18 closing was to ensure that we had adequate 19 time to diligence those changes, ask 20 questions, in connection with a thorough 21 due diligence process, and ensure that the 22 underlying legal structure was still 23 sound. 24 Q. And HarbourVest was investing 25 over \$73 million, correct?</p>	<p style="text-align: right;">Page 57</p> <p>1 Confidential - Pugatch 2 A. Right. 3 Q. And HarbourVest had made 4 investments of this nature previously, 5 correct? 6 A. We did. 7 MS. WEISGERBER: Objection to 8 form. 9 A. HarbourVest has made hundreds of 10 investment over its years, yes. 11 Q. And HarbourVest has conducted 12 due diligence regarding its investments in 13 the past, correct? 14 A. Correct. 15 Q. And HarbourVest received 16 additional information on items of concern 17 and reviewed that information and 18 satisfied itself that this was an 19 appropriate investment, correct? 20 MS. WEISGERBER: Objection to 21 form. Misstates testimony. 22 A. On the back of 23 misrepresentations by Highland, yes. 24 MR. WILSON: Well, I think 25 that's nonresponsive and I object.</p>

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 2 Q. I'm just, I'm just, reading from
 3 your pleading that you filed in the
 4 bankruptcy, where you say that these were
 5 material facts, and HarbourVest sought
 6 more information regarding these facts.
 7 And then you've testified that they
 8 performed additional due diligence
 9 regarding that information they received,
 10 and then they determined that the
 11 investment was appropriate, correct?
 12 MS. WEISGERBER: Objection to
 13 form. Misstates testimony.
 14 Go ahead, Mike.
 15 A. Yeah, that is correct, on the
 16 back of the additional information we
 17 received from Highland.
 18 And I would add, with, you know,
 19 with the benefit of external advisors and
 20 outside counsel reviewing those structural
 21 changes, as well.
 22 Q. All right. Thank you.
 23 Now, going back to your
 24 declaration, which we've marked as
 25 Exhibit 3, Paragraph 3 says that "The

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 2 MR. WILSON: I'm sorry? I
 3 didn't hear you.
 4 MS. WEISGERBER: It can be up to
 5 Mike.
 6 Mike, do you want to take a
 7 quick break? Do you want to keep
 8 going?
 9 MR. WILSON: No, we can, if
 10 y'all need a break, we can take a
 11 break, like 10, 15 minutes.
 12 THE WITNESS: Yeah, why don't we
 13 take a break, please.
 14 MR. WILSON: What do y'all
 15 prefer? 10, 15?
 16 MS. WEISGERBER: Ten minutes is
 17 fine.
 18 Mike, is that good with you.
 19 THE WITNESS: Yeah, ten-minute
 20 break is fine.
 21 MR. WILSON: Okay. Well, we'll
 22 break till, let's say, 1:20 central
 23 time.
 24 THE WITNESS: Perfect.
 25 MR. WILSON: All right. Thanks

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 2 unaudited net asset value of HCLOF, as of
 3 August 31, 2020, was \$44,587,820."
 4 And is that a – is that a book
 5 value, I guess?
 6 A. That is a fair market value, in
 7 accordance with the valuation policy of
 8 HCLOF.
 9 Q. Do you happen to know the net
 10 asset value of HCLOF as of February 1,
 11 2019? And I don't want an exact number, I
 12 just want an approximation.
 13 A. No, I do not.
 14 Q. Do you know where I could get
 15 that information?
 16 A. Presumably from the Debtor.
 17 Q. We'll come back to this in a
 18 minute, but I'm going to –
 19 MS. WEISGERBER: I think we've
 20 been going about an hour, John, if we
 21 can take a quick break.
 22 MR. WILSON: Yeah, a break is
 23 fine.
 24 MS. WEISGERBER: Actually,
 25 Mike...

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 2 guys.
 3 (Recess taken.)
 4 MR. WILSON: Yes, I just sent
 5 out an E-mail with Exhibit 6, and I'm
 6 going to pull that up on the screen
 7 share, as well.
 8 (Whereupon, Exhibit 6, Offering
 9 Memorandum 122 pages, was marked for
 10 identification.)
 11 BY MR. WILSON:
 12 Q. All right. So this is the
 13 Offering Memorandum, and I'm looking at
 14 the bottom of Page 1 – I mean, the top of
 15 Page 1, I'm sorry.
 16 The Company that was being
 17 invested in is Highland CLO Funding, Ltd.
 18 Do you see that, Mr. Pugatch?
 19 MS. WEISGERBER: Objection to
 20 form.
 21 A. I do. Okay.
 22 Q. And then this document defines
 23 Highland, as Highland Capital Management,
 24 L.P. Do you see that?
 25 A. Yes.

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 2 Q. Okay. Now, if we go down to, I
 3 guess it's Page 8 of this document, and
 4 this first full paragraph at the top, it
 5 says, "No voting member of the Advisory
 6 Board shall be a controlled affiliate of
 7 Highland."
 8 Do you see that?
 9 A. I do.
 10 Q. And then it also says that, "It
 11 being understood that none of CLO Holdco
 12 Ltd., it's wholly-owned subsidiaries, or
 13 any of their respective directors or
 14 trustees shall be deemed to be a
 15 controlled affiliate of Highland, due to
 16 their preexisting non-discretionary
 17 advisory relationship with Highland."
 18 Do you see that?
 19 A. Yes.
 20 Q. So there were no affiliates of
 21 Highland on the Advisory Board, correct?
 22 MS. WEISGERBER: Objection to
 23 form.
 24 A. For voting purposes under the
 25 document, that is how this reads, correct.

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 2 form.
 3 Q. And prior to the date of this
 4 document, which I believe is November 15,
 5 2017, CLO Holdco held 100 percent of the
 6 shares of HCLOF, correct?
 7 MS. WEISGERBER: Objection to
 8 form, foundation.
 9 A. I don't recall. I know they
 10 were the largest, the largest investor. I
 11 don't recall if it was 100 percent.
 12 Q. Well, if you look at the chart
 13 below Paragraph A, it says that CLO Holdco
 14 Ltd. immediately prior to the placing on
 15 100 percent share percentage.
 16 Do you have any reason to
 17 disagree with that?
 18 A. No.
 19 MS. WEISGERBER: Objection to
 20 form.
 21 Q. All right. Now, below CLO
 22 Holdco Ltd., these are the five
 23 HarbourVest entities that have filed
 24 proofs of claim in this bankruptcy,
 25 correct?

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 2 MR. WILSON: All right. I'm
 3 going to turn to the next exhibit.
 4 And this is going to be Exhibit No. 7
 5 coming in the E-mail. I'm also going
 6 to put Exhibit No. 7 on the screen.
 7 (Whereupon, Exhibit 7, Share
 8 Subscription and Transfer Agreement 31
 9 pages, was marked for identification.)
 10 Q. All right. Do you see that?
 11 The "Subscription and Transfer Agreement
 12 For Ordinary Shares"?
 13 A. Yep.
 14 Q. All right. So what this
 15 document says is that, it repeats that
 16 Highland HCLF Advisory Ltd. is the
 17 portfolio manager. Highland CLO Funding
 18 Ltd. is the fund, and CLO Holdco Ltd. is
 19 the existing shareholder.
 20 And if we go down to the bottom
 21 half of this page, it says that
 22 HarbourVest was acquiring its shares in
 23 this investment from CLO Holdco, correct?
 24 A. Yes.
 25 MS. WEISGERBER: Objection to

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 2 MS. WEISGERBER: Objection to
 3 form.
 4 A. Those are the five HarbourVest
 5 entities with a direct investment in
 6 HCLOF.
 7 Q. And each one of those entities
 8 has filed a proof of claim in this
 9 bankruptcy, correct?
 10 A. Yes.
 11 Q. And the largest – I think we
 12 discussed this earlier, but Dover Street
 13 IX is the largest of those investors, with
 14 a 35.49 percent share percentage, correct?
 15 MS. WEISGERBER: Objection to
 16 form.
 17 A. Correct.
 18 Q. And if you take the total of
 19 those investments of the HarbourVest
 20 entities, you get a 49.98 percent total.
 21 Is that your understanding?
 22 MS. WEISGERBER: Objection to
 23 form.
 24 A. I know it has 49 percent, and
 25 some percentage. I'll take your math as

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 2 correct.
 3 Q. And 49.98 percent is larger than
 4 the next largest shareholder, which is CLO
 5 Holdco which is 49.02 percent, correct?
 6 MS. WEISGERBER: Objection to
 7 form.
 8 A. In taking all of the HarbourVest
 9 entities, collectively, yes, correct.
 10 Q. And so I want to go back to
 11 earlier where we saw in documents filed by
 12 HarbourVest, where it refers to itself as
 13 a passive investor. What do you, I
 14 apologize if I've already asked you this
 15 question, but what do you mean by passive
 16 investor?
 17 A. Meaning we were a minority
 18 investor in HCLOF. HCLOF was fully
 19 controlled by Highland as the investment
 20 manager. So HarbourVest did not have any
 21 governance, rights, or control as it
 22 related to the ongoing investment
 23 management and decisionmaking of HCLOF.
 24 Q. HarbourVest has the largest
 25 percentage of the shares of any of these

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 2 going to E-mail out the next exhibit.
 3 This was Exhibit 8 that I just sent,
 4 and I'll pull it up on the screen
 5 share.
 6 (Whereupon, Exhibit 8, E-mail
 7 08/15/2017, was marked for
 8 identification.)
 9 Q. Now, I'll represent to you that
 10 I received this document this morning from
 11 your counsel. Do you recognize this
 12 E-mail? Have you seen it before?
 13 A. Yes, I have.
 14 Q. And this E-mail is sent by Brad
 15 Eden. I think you mentioned that he was
 16 one of the representatives that was
 17 involved in the pre-investment discussions
 18 with Highland?
 19 A. Correct.
 20 Q. And I think you told me that
 21 Dustin Willard was involved in those
 22 discussions on the HarbourVest side,
 23 correct?
 24 A. Correct.
 25 Q. And so this is an E-mail sent on

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 2 investors, correct?
 3 MS. WEISGERBER: Objection to
 4 form.
 5 A. Taken collectively, yes.
 6 Q. And HarbourVest owned one of the
 7 two spots on the Advisory Board, correct?
 8 MS. WEISGERBER: Objection to
 9 form.
 10 A. Correct.
 11 Q. And if you look down below the
 12 HarbourVest entities on this chart, you
 13 see that Highland Capital Management, L.P.
 14 is purchasing a .63 percent interest,
 15 correct?
 16 MS. WEISGERBER: Objection to
 17 form. The document speaks for itself.
 18 A. According to the document, yes.
 19 Q. Do you have any reason to
 20 disagree with that document?
 21 MS. WEISGERBER: Objection to
 22 form.
 23 A. I do not.
 24 MR. WILSON: All right. I'm
 25 going to stop that screen share. I'm

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 2 August 15, 2017 from Brad Eden to Dustin
 3 Willard. Are you familiar with Thomas
 4 Surgent?
 5 A. Yes.
 6 Q. Was he involved in those
 7 discussions with you and HarbourVest as
 8 well?
 9 A. In some of those discussions,
 10 yes.
 11 Q. Okay. So when it says, "Dustin,
 12 attached is a legal summary. Of course,
 13 Thomas is available to answer any
 14 follow-up questions." Do you know if
 15 Thomas was consulted with any follow-up
 16 questions?
 17 A. I recall --
 18 MS. WEISGERBER: Objection to
 19 form.
 20 A. -- having follow-up
 21 conversations with Highland, I don't --
 22 around these legal summaries. I don't
 23 recall with whom.
 24 Q. Okay. And just to show you the
 25 attachment that's referenced in the

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 2 E-mail, this says that SEC financial
 3 crisis matter crusader, Terry, Daugherty
 4 and UBS. So and then I guess these are --
 5 this is information provided by Highland
 6 to HarbourVest regarding these matters.
 7 Why were these particular matters
 8 addressed in this E-mail, to your
 9 knowledge?
 10 MS. WEISGERBER: Objection to
 11 form and foundation.
 12 A. These were all outstanding
 13 litigation matters that we had become
 14 aware of in connection with our diligence
 15 that we asked for a further explanation
 16 from Highland on the underlying substance.
 17 Q. Now, did you become
 18 independently aware of these in the course
 19 of your due diligence, or were these
 20 brought to your attention by Highland
 21 first?
 22 A. I don't know.
 23 MS. WEISGERBER: Objection to
 24 form.
 25 Q. You don't know?

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 2 Does this document evidence
 3 those material misrepresentations?
 4 MS. WEISGERBER: Objection to
 5 form. Objection to the extent it
 6 calls for a legal conclusion.
 7 A. Yeah, same answer as previous.
 8 Q. Well, I'm not asking you for a
 9 legal conclusion. I'm asking you are
 10 there misrepresentations in this document
 11 that you claim Highland made?
 12 MS. WEISGERBER: Same
 13 objections.
 14 I think misrepresentations calls
 15 for a legal conclusion regarding legal
 16 misrepresentations, actionable
 17 misrepresentations. So if he doesn't
 18 have any non-privileged testimony to
 19 give, he can't give any testimony.
 20 MR. WILSON: Well, I'm here
 21 today to investigate HarbourVest's
 22 claim and one of the basis of
 23 HarbourVest's claim is
 24 misrepresentation. So I'm trying to
 25 figure out what those

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 2 A. (Nods.)
 3 Q. Okay. And particularly with
 4 respect to Mr. Terry, is it your opinion
 5 that there are any material
 6 misrepresentations made in this summary?
 7 MS. WEISGERBER: Objection to
 8 form. Objection to the extent it
 9 calls for a legal conclusion.
 10 Mike, to the extent you have an
 11 answer that does not infringe on
 12 conversations with counsel, you can
 13 provide it.
 14 A. Yeah, I would say our
 15 understanding or interpretation of that,
 16 or the answer to that question would be
 17 based on conversations with counsel.
 18 Q. Well, this document was provided
 19 to you in the course of the discussions
 20 prior to HarbourVest's investment, and
 21 you've stated that Highland, or you've
 22 taken the position that Highland made
 23 material misrepresentations to
 24 HarbourVest, in the course of these
 25 discussions.

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 2 misrepresentations were.
 3 And I would ask that the witness
 4 tell me if there's a misrepresentation
 5 in this document that was provided in
 6 this E-mail.
 7 MS. WEISGERBER: Same
 8 objections.
 9 Mike, if you have a general
 10 understanding of, generally,
 11 misrepresentations that HarbourVest
 12 believes were made in connection or
 13 regarding the Terry litigation,
 14 et cetera, you can provide that
 15 information.
 16 THE WITNESS: Yeah, sure.
 17 A. So in general, my understanding
 18 and the way that Highland had
 19 characterized the ongoing litigation with
 20 Mr. Terry was that it was nothing more
 21 than an employment dispute with a former
 22 employee and that, you know, the
 23 arbitration -- well, actually, it was
 24 before the Arbitration Board, but the
 25 ongoing litigation had no impact, bearing,

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 2 or ultimate result on the underlying CLOs
 3 that Highland managed, including the Acis
 4 CLOs.
 5 Q. So you're saying that
 6 Highland –
 7 MR. MORRIS: John, I'm sorry to
 8 interrupt. Before you go on, somebody
 9 with the initials DSD just joined the
 10 deposition. Can you please identify
 11 yourself?
 12 MR. DRAPER: This is Douglas
 13 Draper. I just changed machines.
 14 MR. MORRIS: Okay. No problem,
 15 Doug. Thank you.
 16 BY MR. WILSON:
 17 Q. So, and I'm not trying to put
 18 words in your mouth, but is the gist of
 19 what you're telling me that Highland
 20 represented that this was a minor dispute
 21 with a former employee and it would not
 22 affect its CLO business?
 23 A. Correct.
 24 MS. WEISGERBER: Objection to
 25 form.

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 2 another document that would also include
 3 misrepresentations on the part of this,
 4 the Terry lawsuit and ultimate impact on
 5 the CLO business.
 6 BY MR. WILSON:
 7 Q. And what document is that?
 8 A. That was the E-mail, E-mail with
 9 an attachment around a response to a Wall
 10 Street Journal article and some of the
 11 content in the E-mail itself.
 12 Q. Okay. We'll look at that one.
 13 What was the – HarbourVest had
 14 seen the Terry Arbitration Award, correct?
 15 MS. WEISGERBER: Objection to
 16 form.
 17 Q. Prior to making its investment
 18 in HCLOF?
 19 A. We were aware of the existence
 20 and the outcome of the Arbitration Award.
 21 Q. Had you read the Arbitration
 22 Award?
 23 A. No.
 24 Q. Well, how did you know the
 25 substance of the Arbitration Award without

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 2 A. Correct.
 3 Q. Well, are there any more
 4 specific E-mails or written
 5 communications, that you're aware of, that
 6 would contain misrepresentations by
 7 Highland to HarbourVest?
 8 MS. WEISGERBER: Objection to
 9 form.
 10 Are you asking about from
 11 today's production, or are you asking
 12 about just, in general?
 13 MR. WILSON: Well, you produced
 14 two E-mails to us today. I'm just
 15 asking if there's anything else he's
 16 aware of where there's written
 17 misrepresentations from Highland to
 18 HarbourVest.
 19 MS. WEISGERBER: Mike, if you
 20 have an answer separate from
 21 conversations with lawyers, et cetera,
 22 you can certainly answer.
 23 A. Yeah, my understanding of the
 24 documents I reviewed that were part of the
 25 production to you earlier today, there is

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 2 reading it?
 3 MS. WEISGERBER: Objection to
 4 form.
 5 A. We were informed by Highland of
 6 the outcome of the ongoing litigation and
 7 the outcome of the Arbitration Award.
 8 Q. Was that part of the
 9 documentation that you requested Highland
 10 provide you to continue your due
 11 diligence, before making the investment?
 12 MS. WEISGERBER: Objection to
 13 form.
 14 A. We certainly requested more
 15 color around the outcome of that, and any
 16 impact that it could have to HCLOF or the
 17 ongoing viability of Highland's CLO
 18 business.
 19 Q. And what, what were you provided
 20 with respect to the Terry Arbitration
 21 Award?
 22 MS. WEISGERBER: Objection to
 23 form.
 24 A. The existence of that award, the
 25 quantum of that award, the judgment of

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 2 just under \$8 million in connection with
 3 that award. That was the information that
 4 was disclosed at -- and represented as a
 5 settlement or, you know, arbitration
 6 ruling, in connection with the employee
 7 litigation, wrongful termination suit.
 8 Q. So did HarbourVest not request a
 9 copy of the Arbitration Award to review?
 10 MS. WEISGERBER: Objection to
 11 form.
 12 A. We did not specifically, no.
 13 Q. And so, to this day, have you
 14 read the Arbitration Award?
 15 A. I have not.
 16 MS. WEISGERBER: Objection to
 17 form.
 18 Q. You have not?
 19 A. I have not.
 20 MR. WILSON: Okay. I think my
 21 last E-mail went out with Exhibit 9 on
 22 it. I will pull that up.
 23 Q. Can you see that on the screen
 24 share?
 25 A. Yes.

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 2 came out about two weeks after the
 3 HarbourVest investment, correct?
 4 A. Correct.
 5 Q. And it's your opinion or
 6 position that this E-mail contains
 7 misrepresentations that Highland made to
 8 HarbourVest?
 9 MS. WEISGERBER: Objection to
 10 form. Objection to the extent it
 11 calls for a legal conclusion.
 12 A. Yes.
 13 Q. And there was a Wall Street
 14 Journal article that had come out shortly
 15 before this E-mail, correct?
 16 A. Correct.
 17 Q. And how did you became aware of
 18 that Wall Street Journal article?
 19 A. I certainly would have seen it.
 20 I may have been sent it separately by
 21 Highland, I don't recall.
 22 Q. You don't recall if you saw it
 23 independently or Highland telling you
 24 about it?
 25 A. I don't.

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 2 (Whereupon, Exhibit 9,
 3 11/29/2017 E-mail with cover letter
 4 Highland Capital Management, was
 5 marked for identification.)
 6 Q. Okay. So I think this is out of
 7 order, but this should have been first in
 8 the exhibit. But this is an E-mail from
 9 Hunter Covitz to Dustin Willard, Michael
 10 Pugatch and Nick Bellisario, carbon copies
 11 to Trey Parker and Brad Eden.
 12 And Trey Parker and Brad Eden
 13 are Highland affiliates, right?
 14 A. Yes.
 15 Q. And we've talked about Dustin
 16 Willard. Who's Nick Bellisario?
 17 A. He was another member of the
 18 HarbourVest team.
 19 Q. And was he on the, the
 20 four-member board that you talked about
 21 earlier, that made the investment
 22 decision?
 23 A. No, he was the junior member of
 24 the investment team that I alluded to.
 25 Q. Okay. And this, this E-mail

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 2 Q. And what did you -- what was
 3 your reaction to receiving these E-mails
 4 from Highland regarding that article?
 5 MS. WEISGERBER: Objection to
 6 form.
 7 A. The article or the accusations
 8 in the article were something that
 9 required more explanation from our
 10 perspective.
 11 Q. And attached to this E-mail
 12 was -- we just scrolled through it a
 13 second ago -- but a letter from James
 14 Dondero that was sent to the
 15 editor-in-chief of the Wall Street
 16 Journal, Mr. Gerard Baker, on November
 17 28th.
 18 And did you read this
 19 attachment?
 20 A. Yes.
 21 Q. And did this attachment to this
 22 E-mail aleve your concerns that you had
 23 regarding the article?
 24 MS. WEISGERBER: Objection to
 25 form.

<p style="text-align: right;">Page 82</p> <p>1 Confidential - Pugatch 2 A. I wouldn't say alleviated the 3 concerns but certainly provided an 4 explanation or refute to some of the 5 claims made in the, in the article. 6 Q. And do you contend that this 7 letter that was written to Gerard Baker 8 and provided later to HarbourVest was a 9 material misrepresentation? 10 MS. WEISGERBER: Objection to 11 form. 12 Don't answer that, Mike. It 13 calls for a legal conclusion. 14 MR. WILSON: I'm asking for his 15 understanding. 16 Q. Do you contend that there's 17 misrepresentations in this letter? 18 MS. WEISGERBER: Material 19 misrepresentations absolutely calls 20 for a legal conclusion, John. 21 MR. WILSON: Well, I've 22 shortened it to misrepresentations. 23 So I just want to know if he thinks 24 there's anything that's misrepresented 25 in this letter.</p>	<p style="text-align: right;">Page 83</p> <p>1 Confidential - Pugatch 2 MS. WEISGERBER: Same 3 objections. 4 Mike, if you have an 5 understanding, separate from 6 conversations with lawyers, you can 7 answer. 8 A. I would need to reread the 9 letter to definitively answer that outside 10 of conversations with counsel. 11 Q. But to be clear, this letter was 12 issued two weeks after HarbourVest's 13 investment, correct? 14 A. Correct. 15 MS. WEISGERBER: Objection; 16 asked and answered. 17 MR. WILSON: I'm going to now 18 send out the next exhibit, which is 19 going to be Exhibit No. 10. 20 (Whereupon, Exhibit 10, 2004 21 Examination of Investor in Highland 22 CLO Funding Ltd. 10/10/2018, was 23 marked for identification.) 24 MR. WILSON: It just went 25 through. So I'm going to pull it up</p>
<p style="text-align: right;">Page 84</p> <p>1 Confidential - Pugatch 2 on my screen share. 3 So this Exhibit 10, the document 4 I received this morning, filed in the 5 Acis bankruptcy, it looks like, well, 6 let's see, dated in, dated October 10, 7 2018. 8 BY MR. WILSON: 9 Q. Have you seen this document 10 before? 11 A. Yes. 12 Q. And it's a motion for 2004 13 Examination of Investor in Highland CLO 14 Funding, Ltd., correct? 15 A. Sorry. Was there a question, 16 John? 17 Q. Yeah. I was just asking you to 18 confirm that this was the motion for 2004 19 Examination of Investor in Highland CLO 20 Funding? 21 A. Yes. 22 Q. And so if I scroll down to 23 Paragraph 6, which is on, it looks like 24 it's on Page 4. In the second sentence, 25 it says that "Although HCLOF/ALF was a one</p>	<p style="text-align: right;">Page 85</p> <p>1 Confidential - Pugatch 2 time wholly-owned by an affiliate of 3 Highland, it did an offering memorandum in 4 November of 2017 and as a result, is now 5 owned 49.985% by certain affiliates of a 6 large investor and manager of private 7 equity funds." 8 And that's defined as investor. 9 So the Investor is the HarbourVest 10 entities collectively, correct? 11 A. Correct. 12 Q. All right. And then the next 13 sentence, says that "Despite its large 14 ownership percentage in HCLOF in the 15 alleged millions in losses that will 16 result if the Acis CLOs are not reset to 17 make them consistent with prevailing 18 market conditions the Investor has not yet 19 appeared in this case or taken any 20 position in this bankruptcy case." 21 Do you see that? 22 A. I do. 23 Q. Is that correct? 24 MS. WEISGERBER: Objection to 25 form.</p>

<p style="text-align: right;">Page 86</p> <p>1 Confidential - Pugatch 2 A. Is what correct? 3 Q. Well, I guess, I'm most 4 concerned with this last part of the 5 sentence. It starts with "The Investor 6 has not yet appeared in this case or taken 7 any position in the bankruptcy case." 8 Do you agree with that? 9 MS. WEISGERBER: Objection to 10 form. 11 Mike, if you want to look at the 12 whole document, you're welcome to. 13 This is not a document that's a 14 HarbourVest-prepared document. 15 BY MR. WILSON: 16 Q. Maybe a better way of asking the 17 question is: As of the date of this 18 document, which was in October of 2018, 19 had HarbourVest appeared in the Acis 20 bankruptcy? 21 A. No, we did not. 22 Q. And had they asserted any 23 positions regarding the Acis bankruptcy? 24 A. Not through the court. 25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 87</p> <p>1 Confidential - Pugatch 2 form. 3 Q. Okay. Had Highland encouraged 4 HarbourVest to participate in the Acis 5 bankruptcy? 6 MS. WEISGERBER: Objection to 7 form. 8 A. No. 9 Q. They did not? 10 MS. WEISGERBER: Objection to 11 form. 12 Q. Highland did not encourage 13 HarbourVest to participate in the Acis 14 bankruptcy? 15 A. When you say "participate," can 16 you define that, please. 17 Q. Well, appear in the case, as 18 stated in this motion. 19 A. No, they had not. 20 Q. Did Harbour – I'm sorry – did 21 Highland keep HarbourVest apprised of the 22 events that occurred in the Acis 23 bankruptcy? 24 MS. WEISGERBER: Objection to 25 form. I'm just going to restate my</p>
<p style="text-align: right;">Page 88</p> <p>1 Confidential - Pugatch 2 objection to the extent you're asking 3 questions about HarbourVest. This is 4 Mr. Pugatch answering, based on his 5 knowledge. 6 A. We were kept informed from time 7 to time throughout the Acis bankruptcy 8 proceeding. 9 Q. Well, did you, in fact, have 10 weekly conference calls with Highland 11 representatives regarding the Acis 12 bankruptcy? 13 MS. WEISGERBER: Objection to 14 form. 15 A. I don't recall them being 16 weekly, no. 17 Q. You can agree with me you 18 participated in the conference calls with 19 Highland regarding the Acis bankruptcy? 20 A. Yes. 21 MS. WEISGERBER: Same objection. 22 Q. And on what, on what – 23 MR. WILSON: Sorry. Strike 24 that. 25 Q. With what regularity would you</p>	<p style="text-align: right;">Page 89</p> <p>1 Confidential - Pugatch 2 estimate those conference calls occurred, 3 if it's not weekly? 4 MS. WEISGERBER: Objection to 5 form. 6 A. From memory, maybe once, once a 7 month on average. Sometimes more 8 frequently, sometimes less frequently. 9 Q. Did Highland provide you with 10 documents and evidence that were filed in 11 the Acis bankruptcy? 12 MS. WEISGERBER: Objection to 13 form. 14 We're really starting to get 15 pretty far afield here, John, from 16 HarbourVest. You know, I'm not sure 17 where you're going with this. This is 18 a settlement motion that's teed up for 19 the court. 20 You're welcome to keep going, 21 but at some point we're going to cut 22 it off. 23 MR. WILSON: Well, I think – I 24 don't think I'm going to go too far 25 down this path, but I think this</p>

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 2 directly relates to the claims that
 3 HarbourVest has made. But I'll repeat
 4 my question.
 5 BY MR. WILSON:
 6 Q. Did Highland provide HarbourVest
 7 with documents and evidence that were
 8 filed in the Acis bankruptcy?
 9 MS. WEISGERBER: Objection to
 10 form.
 11 A. I don't recall what documents
 12 Highland may have provided to us, at that
 13 point in time.
 14 Q. I don't want you to recall
 15 specific documents that were provided, but
 16 did, did Highland provide documents from
 17 the Acis bankruptcy to HarbourVest?
 18 MS. WEISGERBER: Objection to
 19 form. Asked and answered.
 20 A. I don't recall.
 21 Q. You don't recall?
 22 A. (Nods.)
 23 Q. Would you dispute that between
 24 2018 and 2019 that Highland provided over
 25 40,000 pages of documents related to the

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 2 A. Yes.
 3 Q. Now, I'm going to go back up to
 4 Paragraph 2. This says that Acis LP
 5 manages the Acis CLOs, that certain
 6 portfolio management agreement between
 7 Acis, and then it goes on. So what are
 8 the Acis CLOs, as it relates to the
 9 investment that HarbourVest made?
 10 MR. MALONEY: Objection to the
 11 form of the question.
 12 MS. WEISGERBER: Objection to
 13 form.
 14 A. The Acis CLOs -- or HCLOF owned
 15 equity in certain of the Acis CLOs as a
 16 portion of its investment portfolio.
 17 Q. And I think you were trying to
 18 distinguish earlier between who the
 19 portfolio manager was. And that would
 20 depend on whether it was an Acis CLO or a
 21 Highland CLO; is that correct?
 22 MR. MALONEY: Objection to form.
 23 MS. WEISGERBER: Objection to
 24 form, misstates testimony.
 25 A. I was referencing the portfolio

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 2 Acis bankruptcy to HarbourVest?
 3 MS. WEISGERBER: Objection to
 4 form, foundation.
 5 A. I don't know and I don't recall.
 6 Q. And the Acis plan became
 7 effective on February 1st, 2019. Is that
 8 your understanding?
 9 A. I believe so, yes.
 10 Q. And do you -- I asked you this
 11 earlier, but I'm going to ask again. Do
 12 you have any understanding of what the
 13 value of HCLOF was, at that date?
 14 A. I don't recall.
 15 MS. WEISGERBER: Objection to
 16 form.
 17 Q. You don't?
 18 A. I don't recall, no.
 19 Q. And there was an injunction put
 20 in place in the Acis bankruptcy that
 21 prevented certain actions with respect to
 22 HCLOF, correct?
 23 MS. WEISGERBER: Objection to
 24 form, foundation.
 25 MR. MALONEY: Join.

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 2 manager of the underlying CLOs, yes.
 3 Q. But we can agree that Acis had
 4 responsibility for managing at least a
 5 portion of HCLOF, correct?
 6 A. Highland --
 7 MR. WILSON: Objection to form.
 8 MR. MALONEY: Objection to form
 9 as well, foundation, and legal
 10 conclusion.
 11 (Reporter clarification.)
 12 A. It's my understanding it's
 13 Highlands' subsidiaries, yes.
 14 Q. Okay. Well, I'm going to go
 15 down to Paragraph 4, at the top of your
 16 screen here where it says, "Recently
 17 William Scott, the director of HCLOF,
 18 testified that he wants to reset the Acis
 19 CLOs to bring them in line with current
 20 market interest rates, that the inability
 21 to do the reset is causing damages to
 22 HCLOF in the amount of approximately
 23 \$295,000 per week."
 24 Is that an accurate statement?
 25 MS. WEISGERBER: Objection to

<p style="text-align: right;">Page 94</p> <p>1 Confidential - Pugatch 2 form and foundation. 3 MR. MALONEY: Mark Maloney. 4 Object to form and foundation. 5 A. I don't know. You'd have to ask 6 William Scott. 7 Q. Well, were you aware, I mean, 8 there's a citation to a, well, I don't 9 know if there's a citation on this one. 10 But it says that he recently testified. 11 Were you aware that he testified that he 12 wanted to reset the Acis CLOs? 13 MS. WEISGERBER: Same objection. 14 We're really getting far afield. 15 MR. WILSON: I'm just asking if 16 he was aware that this statement 17 occurred. 18 A. At some point in time, yes, I 19 became aware of that. 20 Q. Okay. Do you agree that the 21 inability to do a reset was causing 22 damages in the amount of \$295,000 per 23 week? 24 MS. WEISGERBER: Objection to 25 form and foundation. This is not a</p>	<p style="text-align: right;">Page 95</p> <p>1 Confidential - Pugatch 2 HarbourVest-prepared document. 3 MR. WILSON: Well, I understand 4 that. I'm just asking if he agrees 5 with it. 6 A. I don't have enough information 7 to assess that, specifically the \$295,000 8 per week number. 9 Q. I want to go down to Paragraph 7 10 of this document, and this is going to be 11 at the top of Page 5. It says 12 "Mr. Ellington also testified that because 13 it would be putting in additional capital 14 in connection with any reset CLOs, the 15 Investor," and we discussed that that's 16 HarbourVest, "had the ability to start 17 'calling the shots' and dictate the terms 18 of any reset transactions." 19 Do you agree with that? 20 A. No. 21 MS. WEISGERBER: Objection to 22 form. 23 Q. I want to go down to Paragraph 24 9. 25 It says, "The Trustee also needs</p>
<p style="text-align: right;">Page 96</p> <p>1 Confidential - Pugatch 2 information regarding whether the Investor 3 presently has any concerns about pursuing 4 reset transactions with the Reorganized 5 Acis and Brigade, under the plan now that 6 Acis has been able to successfully serve 7 as the portfolio manager for the Acis CLOs 8 on a post-petition basis, and there are no 9 impediments to the ability of the 10 Reorganized Acis and Brigade to pursue a 11 reset on the Acis CLOs." 12 Do you know whether the Investor 13 had any concerns about pursuing a reset? 14 MS. WEISGERBER: Objection to 15 form, foundation. 16 A. The context of a reset or 17 refinancing of the various CLOs in HCLOF 18 was part of the original investment 19 thesis. So there would not have been 20 concerns about the ability to do so. Our 21 concerns were more in the inability to do 22 so, as a result of the Acis bankruptcy. 23 Q. But here, you've got the Trustee 24 representing in Paragraph 5, that 25 according to the Trustee's Second Amended</p>	<p style="text-align: right;">Page 97</p> <p>1 Confidential - Pugatch 2 Joint Plan, it provides for such a reset 3 to be performed by the Reorganized Acis 4 and supervised by Brigade Capital 5 Management. 6 And it appears to me that the 7 Trustee is trying to get the Investor's 8 position on whether a reset should be 9 pursued. And I'm just asking you whether 10 HarbourVest objected to a reset at this 11 time? 12 MS. WEISGERBER: I'm going to 13 object to all of the colloquy before. 14 I'm going to object to any extent 15 Mike's being asked about what the 16 Trustee wanted or viewed. If you want 17 to ask your question in isolation, go 18 ahead. 19 Q. What was HarbourVest's position 20 regarding a reset, as of the date that 21 this was filed, and I'll look again, 22 October 10, 2018? 23 MS. WEISGERBER: Objection to 24 form. Objection to the extent it's 25 asking HarbourVest's position. And I</p>

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 2 cannot conceive how this is relevant
 3 to the 9019 motion before the court
 4 right now.
 5 Nonetheless, Mike, if you have
 6 an answer, on behalf of yourself, you
 7 can answer.
 8 A. HarbourVest was a passive
 9 minority investor in HCLOF. It had no
 10 ability to control the underlying
 11 portfolio management or ability to reset,
 12 refinance, or call in any of the equity of
 13 the underlying CLOs. That was all under
 14 the purview of Highland.
 15 Q. Did you understand that
 16 Mr. Ellington had given sworn testimony
 17 that the Investor is the party calling the
 18 shots for HCLOF, with respect to any reset
 19 transactions?
 20 MS. WEISGERBER: Objection to
 21 form.
 22 A. I did become aware of it, yes.
 23 Q. When did you become aware of
 24 that?
 25 A. At some point subsequent to that

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 2 deposition was given, after this motion
 3 was filed?
 4 A. Yes.
 5 Q. And who was the designated
 6 deponent?
 7 A. I was.
 8 Q. And were documents produced, as
 9 a result of this?
 10 A. Yes, there were.
 11 Q. And were you asked at that
 12 deposition what the Investor's position on
 13 a reset was?
 14 MS. WEISGERBER: Objection to
 15 form.
 16 If you recall.
 17 A. I don't recall specifically that
 18 question being asked.
 19 Q. Well, do you know what
 20 the Debtor's position -- I'm sorry, the
 21 Debtor's -- the Investor's position on a
 22 reset was as of that day?
 23 MS. WEISGERBER: Objection to
 24 form. Asked and answered.
 25 A. I would just say again, in

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 2 testimony being given.
 3 Q. But was it when you read this
 4 motion that we're looking at as
 5 Exhibit 10?
 6 MS. WEISGERBER: Objection to
 7 form.
 8 A. It may have been. I don't
 9 recall the exact time or medium that I
 10 became aware of that.
 11 Q. Was a deposition given as a
 12 result of this motion?
 13 MS. WEISGERBER: Objection to
 14 form. If you have the whole document,
 15 Mike, that may make sense.
 16 MR. WILSON: Well, this motion
 17 at the top says it's a Motion for 2004
 18 Examination of Investor. And then
 19 attached to this motion are some
 20 document requests, and then deposition
 21 topics for a corporate representative
 22 of the Investor, and then a proposed
 23 order.
 24 BY MR. WILSON:
 25 Q. Do you recall whether a

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 2 general, the original investment thesis
 3 here was predicated on a refinancing reset
 4 of the various CLOs, and we were not in
 5 control as a passive minority investor
 6 here to --
 7 Q. Well, you said you weren't in
 8 control, but what would HarbourVest's
 9 preference have been?
 10 MS. WEISGERBER: Objection to
 11 form.
 12 A. I do not recall.
 13 MS. WEISGERBER: If you recall.
 14 A. I don't recall the specifics
 15 around what Acis CLO were referring to
 16 here or what the specific implications of
 17 a reset were at that time; but regardless,
 18 that was a decision for the investment
 19 manager of HCLO.
 20 Q. But was it your opinion, your
 21 personal opinion, that a reset was
 22 appropriate?
 23 MS. WEISGERBER: Objection to
 24 form.
 25 A. Again, we were not the portfolio

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 2 manager of HCLOF. We were not in control
 3 of those decisions or making
 4 recommendations on those decisions. That
 5 was the delegated authority of Highland,
 6 as the investment manager.
 7 Q. I'm not asking for that. I'm
 8 asking for your personal feelings toward a
 9 reset.
 10 MS. WEISGERBER: Same objection.
 11 He's only answering on behalf of
 12 himself, and it's been asked and
 13 answered three times since.
 14 MR. WILSON: Well, he hasn't
 15 answered the question. He's just told
 16 me they don't have the authority to do
 17 the reset.
 18 MS. WEISGERBER: And he told you
 19 the other information he'd be required
 20 to even have an opinion on it. So
 21 same objection stands. It's not a
 22 specific enough question for him.
 23 Mike, you're welcome, if you
 24 have, if you have an answer, you're
 25 welcome to give it.

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 2 A. A reset of what?
 3 MS. WEISGERBER: Same objection.
 4 Q. A reset as been discussed all
 5 through this motion, the same reset we're
 6 talking about.
 7 MS. WEISGERBER: Objection.
 8 Same objections. I just don't see how
 9 he could possibly answer this vague
 10 question.
 11 Q. Okay. So William Scott,
 12 director of HCLOF, testified that he
 13 wanted to reset the Acis CLOs because if
 14 they don't, they are losing \$295,000 a
 15 week.
 16 Did you think that a reset was
 17 appropriate in line with what Mr. Scott
 18 believed?
 19 MR. MALONEY: Objection to form,
 20 foundation.
 21 MS. WEISGERBER: Same
 22 objections. And asked and answered
 23 numerous times.
 24 A. We were not managing the
 25 portfolio. We were an investor in a

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 2 A. Yeah, the investment guidelines
 3 of HCLOF, from the documents that we
 4 signed at the time we entered into the
 5 transaction, laid out the specific, again,
 6 investment guidelines that HCLOF would be
 7 guided under, including the opportunity to
 8 refinance or reset various CLOs over time,
 9 in accordance with Highland's, you know,
 10 expectations and ultimate decision to do
 11 so.
 12 Q. But did you believe, at this
 13 time, that a reset was appropriate?
 14 MS. WEISGERBER: Objection to
 15 form. This is asked and answered
 16 several times now, I think we should
 17 move on. He's given you an answer.
 18 MR. WILSON: Well, I want to
 19 know what his personal opinion was
 20 about whether the reset was
 21 appropriate.
 22 A. What reset are you referring to?
 23 Q. A reset as of October 10, 2018.
 24 At that time, did you believe that a reset
 25 was appropriate?

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 2 company, an investment company that was
 3 managing this. We were not, I was not
 4 proximate enough to any of the underlying
 5 happenings of the look through CLO
 6 positions of HCLOF to have an informed
 7 view on this, at this time.
 8 Q. Is your testimony that you did
 9 not have an opinion as to whether the Acis
 10 CLO should be reset in late 2018?
 11 MS. WEISGERBER: Objection to
 12 form. Misstates testimony.
 13 A. My view is that the original
 14 investment guidelines here called for a
 15 reset or refinance of the CLOs and that
 16 Highland was subsequently in full control
 17 of whether or not to pursue this, and we,
 18 HarbourVest, as an investor had no ability
 19 to object or to force that on a go-forward
 20 basis.
 21 MR. WILSON: Objection.
 22 Nonresponsive.
 23 Q. I want to know your personal
 24 opinion of whether you thought a reset was
 25 appropriate in October of 2018.

<p style="text-align: right;">Page 106</p> <p>1 Confidential - Pugatch 2 MR. MORRIS: Objection to the 3 form of the question. That's been 4 asked and answered. 5 MR. WILSON: He has yet to give 6 his answer to – 7 MR. MORRIS: He just told you he 8 didn't have enough information. He 9 just told you that, crystal clear. 10 MR. WILSON: Well, I'm not going 11 to argue with you, John, but I just 12 want an answer to my question. 13 His answer, he wouldn't agree 14 with my, with my summation that he had 15 no opinion, so I just want to know 16 what his opinion is. 17 MS. WEISGERBER: Same 18 objections. 19 You're not giving him enough 20 information to answer the question, 21 and at this point, it would be 22 speculation. We can just keep going 23 in circles on this, but your – 24 MR. WILSON: His opinion would 25 be speculation?</p>	<p style="text-align: right;">Page 107</p> <p>1 Confidential - Pugatch 2 MS. WEISGERBER: He said that, 3 he actually testified at some point 4 that he doesn't recall specifics of 5 the time, so that was another piece of 6 the puzzle. 7 I mean, I don't want to be 8 coaching the witness or giving 9 testimony here, but I think you're not 10 listening to the things he's saying, 11 John, just because you don't like it. 12 BY MR. WILSON: 13 Q. Mr. Pugatch, did you have an 14 opinion, in October of 2019, about whether 15 the Acis CLOs should be reset? 16 MS. WEISGERBER: Objection to 17 form. 18 A. I don't recall any definitive 19 opinion I would have had, but as stated, 20 was not proximate enough to have an 21 informed opinion, in any event. 22 Q. And to your knowledge, have the 23 Acis CLOs ever been reset? 24 MS. WEISGERBER: Objection to 25 form, foundation.</p>
<p style="text-align: right;">Page 108</p> <p>1 Confidential - Pugatch 2 A. I do not believe that any of the 3 Acis CLOs were ever reset. 4 Q. All right. So who negotiated 5 this claim, the settlement of this claim 6 on behalf of HarbourVest? 7 A. I did. 8 Q. And who negotiated for the 9 Debtor? 10 A. Jim Seery. 11 Q. And when did those negotiations 12 begin? 13 A. It started sometime in November, 14 I believe. 15 Q. And are you aware that Jim Seery 16 has ever taken the position that the 17 HarbourVest claim was worthless? 18 MS. WEISGERBER: Objection to 19 form, foundation. 20 A. No, I'm not aware of that. 21 Q. Has Jim Seery ever offered 22 \$5 million to settle the HarbourVest 23 claim? 24 A. Not to my knowledge. 25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 109</p> <p>1 Confidential - Pugatch 2 form. 3 MR. WILSON: I'm going to send 4 out Exhibit 11. 5 (Whereupon, Exhibit 11, 6 Declaration of John A. Morris in 7 Support of the Debtor's Motion For 8 Entry of an Order Approving Settlement 9 With Harbourvest (Claim Nos. 143, 147, 10 149, 150, 153, 154) and Authorizing 11 Actions, 82 pages, was marked for 12 identification.) 13 BY MR. WILSON: 14 Q. I want pull this up on the 15 screen share. This Exhibit 11 is the 16 Declaration of John Morris in Support of 17 the Debtor's 9019 Motion, bears 18 Document 1631. And attached to this 19 exhibit is a trim cut copy of the 20 Settlement Agreement executed December 23, 21 2020. 22 And the Settlement Agreement has 23 Paragraph 1, Settlement of Claims, that 24 HarbourVest is going to receive a 25 \$45 million unsecured, general unsecured</p>

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 2 claim, and a \$35 million subordinated
 3 claim.
 4 And then Part B of that
 5 paragraph states that HarbourVest is going
 6 to transfer all its rights, titles, and
 7 interests to its investment in CLOF to the
 8 Debtor or its nominee.
 9 Is that your understanding of
 10 the general terms of this settlement?
 11 MS. WEISGERBER: Objection to
 12 form.
 13 A. Yes, it is.
 14 Q. Okay. And also in Paragraph 5,
 15 Each HarbourVest party agrees that it will
 16 vote all of HarbourVest claims held by
 17 such HarbourVest party to accept the plan.
 18 And I won't read all of that.
 19 But the gist of this paragraph is that
 20 HarbourVest is going to vote for the
 21 Debtor's proposed plan; is that correct?
 22 MS. WEISGERBER: Objection to
 23 form.
 24 A. Yes, correct.
 25 Q. And how did that term come to be

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 2 MR. WILSON: I'm going to take a
 3 ten-minute break, and I think I'm
 4 almost ready to wrap up. So I want to
 5 stop my screen share. And let's,
 6 well, let's start back at 2:30, and I
 7 think I'll be quick. Thank you.
 8 (Recess taken.)
 9 BY MR. WILSON:
 10 Q. Mr. Pugatch, earlier you
 11 testified that consistent with your
 12 declaration you filed that as of August
 13 31, 2020, the value of HCLOF was
 14 \$44.5 million. And then if we look at --
 15 I don't remember which --
 16 Okay. So this would have been
 17 Exhibit 7. I'll do a share screen.
 18 As of November 15, 2017 these
 19 shares were purchased at \$1.02 and change
 20 apiece, and there were a total number of
 21 143 million shares.
 22 Was the value of this investment
 23 roughly \$150 million, as of November 15,
 24 2017?
 25 MS. WEISGERBER: Objection to

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 2 in this Settlement Agreement?
 3 MS. WEISGERBER: Objection to
 4 form.
 5 A. I believe it was put there as
 6 part of the drafting of the ultimate
 7 agreement to the fund.
 8 Q. Well, whose suggestion was it
 9 that it be added to the drafting?
 10 MS. WEISGERBER: Objection to
 11 form.
 12 A. I believe that it came from
 13 Debtor's counsel, as they took the lead on
 14 drafting the documentation here.
 15 Q. Did Jim Seery ever tell you that
 16 it was important to him that HarbourVest
 17 vote in support of the plan?
 18 MS. WEISGERBER: Objection to
 19 form.
 20 A. I don't recall that ever being
 21 discussed. Certainly it was not the
 22 prominent feature of any of the
 23 discussions or negotiations that I ever
 24 had with Jim.
 25 Q. Okay.

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 2 form. Foundation.
 3 MR. MALONEY: Join.
 4 MS. WEISGERBER: I don't know,
 5 Mike, if you're comfortable doing that
 6 math or what.
 7 A. Yes, approximately that's
 8 correct.
 9 Q. Okay. And you know, and I've
 10 read your papers and you talk about
 11 attorneys' fees that you say weren't
 12 appropriate to be charged to HCLOF and
 13 that part of it, but as to the loss of
 14 value of the actual investment, what's
 15 your understanding of what led to that?
 16 MS. WEISGERBER: Objection to
 17 form. Objection to the extent it
 18 calls for a legal conclusion.
 19 Mike, to the extent you have a
 20 nonlegal opinion on that, that's not
 21 based on conversations with counsel,
 22 you can answer.
 23 A. Yeah, I think a lot of the value
 24 erosion was due to the inability to
 25 refinance, reset a number of the

<p style="text-align: right;">Page 114</p> <p>1 Confidential - Pugatch 2 underlying CLOs that was part of the 3 original investment thesis here, largely 4 as a result of the ongoing litigation, 5 that Highland was involved in, and the 6 subsequent Acis bankruptcy. 7 Q. And so during the period of time 8 when the injunction prohibited certain 9 actions with respect to this investment, 10 is it your opinion that this investment 11 was losing value? 12 MR. MALONEY: Objection. 13 MS. WEISGERBER: Objection to 14 form. 15 A. Can you repeat the question, 16 John? 17 Q. Well, I guess I want to know, 18 like, in a, on a timeline kind of basis, 19 do you think that the significant 20 reduction of value occurred prior to or 21 after the confirmation of the Acis plan on 22 February 1, 2019? 23 MS. WEISGERBER: Objection to 24 form. Objection to the extent it 25 calls for a legal conclusion.</p>	<p style="text-align: right;">Page 115</p> <p>1 Confidential - Pugatch 2 You can give your lay opinion, 3 if you have one, Mike. 4 A. I think it's all been as a 5 result of the events leading up to the 6 Acis bankruptcy, including the inability 7 to refinance or reset the CLOs which would 8 have been to the benefit of the CLO equity 9 holders including HCLOF. 10 Q. And so what, what was the cause 11 of the inability to reset? 12 MS. WEISGERBER: Same 13 objections: form, foundation, legal 14 conclusion. 15 If you have a non-privileged 16 answer, Mike, go ahead. 17 A. Yeah, my understanding was 18 originally the TRO, preventing Highland 19 and HCLOF from pursuing that, and then 20 subsequent to the Acis bankruptcy ruling, 21 a similar injunction that remained around 22 the inability for the equity holders of 23 those CLOs to redeem or refinance or 24 reset. 25 Q. So do you – is there any</p>
<p style="text-align: right;">Page 116</p> <p>1 Confidential - Pugatch 2 component, in your opinion, of the loss of 3 value of these investments due to 4 portfolio mismanagement? 5 MS. WEISGERBER: Objection to 6 form, foundation, legal conclusion, or 7 expert opinion, calling for 8 speculation. 9 If you have a view, Mike. 10 A. Yeah. Can you be more specific 11 with the question, John? 12 Q. Well, I'll ask it a different 13 way. 14 Do you think that portfolio 15 mismanagement was a portion of the cause 16 of the reduction in value? 17 MS. WEISGERBER: Same objection. 18 A. I can't speculate as to, you 19 know, the underlying management decisions 20 around the CLOs, but what I do know is 21 that the mismanagement and 22 misrepresentations at the HCLOF level, 23 that would ultimately result in the Acis 24 bankruptcy and subsequent to that, the TRO 25 and the inability to refinance or reset</p>	<p style="text-align: right;">Page 117</p> <p>1 Confidential - Pugatch 2 that has been the, far and away, the 3 largest contributor to loss of value 4 within the portfolio. 5 Q. One of the allegations that 6 HarbourVest has made is that Highland 7 improperly changed the portfolio manager. 8 Is it your opinion that if that had not 9 been done, the portfolio manager had not 10 been changed at the inception of 11 HarbourVest's investment, that that would 12 have preserved any value of this fund? 13 MR. MORRIS: Objection to the 14 form of the question. 15 MS. WEISGERBER: Same objection. 16 Calling for speculation, hypothetical 17 lay opinion. 18 If you have testimony, go ahead, 19 Mike. 20 A. Sorry, could you just repeat the 21 question, John? I want to make sure I'm 22 answering it correctly. 23 Q. I guess I just want to know, and 24 I think you kind of hinted at this a 25 little bit earlier today, but I guess what</p>

<p style="text-align: right;">Page 118</p> <p>1 Confidential - Pugatch 2 I really want to know is do you think that 3 the particular portfolio manager made a 4 difference in the loss of value that HCLOF 5 suffered? 6 MS. WEISGERBER: Same 7 objections. 8 A. Again, it sounds like you're 9 asking a different question there than 10 what I thought I understood your question 11 to be initially. What I would say to that 12 is the decision originally to change the 13 portfolio manager, and ultimately the 14 events that took place following the 15 Arbitration Award for Mr. Terry, resulted 16 in the subsequent Acis bankruptcy, which 17 in turn has led to the destruction of 18 value, because of the inability to 19 refinance or reset, the underlying CLOs. 20 Q. So HarbourVest is not alleging 21 that the portfolio manager made any 22 particular decisions or participated in 23 any mismanagement that led to reduction in 24 value? 25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 119</p> <p>1 Confidential - Pugatch 2 form. 3 A. When you're asking about 4 portfolio manager, are we referring to the 5 portfolio manager at the underlying CLO 6 level or at the HCLOF level? I think 7 there are two different levels here of 8 portfolio management. 9 Q. Well, I'm talking about the 10 portfolio manager, and you can tell me 11 which one it is, but which portfolio 12 manager has the ability to, to impact the 13 performance of these funds? 14 MR. MORRIS: Objection. 15 A. If you're referring to HCLOF, 16 the – 17 MS. WEISGERBER: Objection to 18 form. 19 A. – investment manager, or the 20 portfolio manager of HCLOF has the ability 21 to drive value creation by virtue of its 22 equity position in the underlying CLOs. 23 Q. Well, which portfolio manager 24 makes the day-to-day decisions about 25 selling assets, trading assets, that, that</p>
<p style="text-align: right;">Page 120</p> <p>1 Confidential - Pugatch 2 I guess – 3 A. If you're referring to 4 underlying credits, that would be the 5 portfolio manager in each of the 6 individual CLOs. The impact in value to 7 the equity investment in the CLOs is a 8 decision at the HCLOF level, where the 9 majority of that value erosion has 10 resulted from the inability to refinance 11 or reset those CLO entities. 12 Q. And that's what we're talking 13 about when you said that they, that 14 Highland changed the portfolio manager, 15 you're talking about at the HCLOF level, 16 right? 17 MS. WEISGERBER: Objection to 18 form. 19 A. Well, I was responding to the 20 question that I thought you asked. I 21 wasn't necessarily stating that. 22 Q. I guess all I'm really trying to 23 do here is just understand HarbourVest's 24 position. And it sounds to me, and 25 correct me if I'm wrong, it sounds to me</p>	<p style="text-align: right;">Page 121</p> <p>1 Confidential - Pugatch 2 that what you're saying is that the 3 diminution of value wasn't attributable to 4 poor investment decisions by a portfolio 5 manager, as much as it was the 6 consequences in the Acis bankruptcy of the 7 change in portfolio manager; is that fair? 8 MS. WEISGERBER: Objection to 9 form. Misstates testimony. 10 A. Yes, it is. That is my general 11 understanding, yes. 12 MR. WILSON: Okay. No further 13 questions. 14 MR. MORRIS: All right. Well, 15 thank you very much. 16 THE REPORTER: Does anybody have 17 any other questions? 18 MR. KANE: Yes. This is John 19 Kane with CLO Holdco. I'll jump on 20 video. I've got some questions, but 21 I'm going to be relatively short. If 22 anybody else has a little bit heavier 23 schedule, let me know. 24 All right. I'll take that as a 25 go-ahead.</p>

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1 Confidential - Pugatch
 2 EXAMINATION
 3 BY MR. KANE:
 4 Q. This is John Kane. I represent
 5 CLO Holdco.
 6 Hi, Mike Pugatch. It's nice to
 7 talk to you.
 8 A. Likewise.
 9 Q. I just wanted to briefly
 10 confirm. I believe you testified you
 11 participated in negotiations that lead to
 12 the Settlement Agreement, that is part of
 13 the 9019 motion, before the bankruptcy
 14 court; is that correct?
 15 A. Correct.
 16 Q. And did you actively negotiate
 17 the terms of that Settlement Agreement?
 18 A. Yes.
 19 Q. As in dollar amounts, what the
 20 consideration exchanged, how it would
 21 work, that kind of stuff, obviously with
 22 the assistance of counsel?
 23 A. Yes. All of that. The
 24 negotiations were, you know, over the
 25 course of a number of weeks and a number

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 2 Q. And what would you estimate, I
 3 going to have to imagine, let me rephrase
 4 the question.
 5 Have you guys done kind of an
 6 internal best guess of what your unsecured
 7 and subordinated claims would be, under
 8 the plan, the value?
 9 MS. WEISGERBER: Objection.
 10 Objection to form.
 11 A. Just to be clear, John, are you
 12 referring to the expected recovery value
 13 of our claims?
 14 Q. Yes, sir.
 15 MS. WEISGERBER: Objection to
 16 form. Can we just clarify, so you're
 17 talking about what they'll recover
 18 ultimately? Is that the question,
 19 John? I'm confused myself. I just
 20 want to be sure I am following.
 21 MR. KANE: Yeah. So I'm asking
 22 Mike how much he believes, based on
 23 his analysis, that HarbourVest is
 24 likely to recover from the \$45 million
 25 allowed general unsecured claim and

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 2 of conversations directly with the Debtor,
 3 with counsel, all-hands calls, et cetera.
 4 Q. Okay. And as part of that in
 5 the Settlement Agreement, you say the
 6 HarbourVest entities were members in HCLOF
 7 are in essence selling their shares to the
 8 Debtor, and also in exchange getting some
 9 claims back in the Debtor's plan. Is that
 10 a fair summary?
 11 MS. WEISGERBER: Objection to
 12 form. Compound question.
 13 Q. Let me ask it a different way.
 14 A. Can you re-ask that, please?
 15 Q. Yeah. I'm happy to do that.
 16 Why don't you describe for me
 17 how you would summarize that settlement?
 18 A. Largely, as I think you just
 19 described it, which was in exchange for,
 20 in exchange for the, both the unsecured
 21 creditors' claim, and subordinated
 22 creditors' claim, that settlement value is
 23 in exchange for us transferring the
 24 interest in HCLOF to the Debtor, as part
 25 of that overall negotiating package.

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 2 \$35 million allowed subordinated
 3 claim, if the settlement is approved
 4 and the plan is confirmed.
 5 MS. WEISGERBER: Objection to
 6 form.
 7 But you can answer, if you have
 8 an answer, Mike.
 9 A. We do have a sense. It's really
 10 a range of projected outcomes, as you can
 11 imagine, based on the recoveries, largely
 12 informed by conversations with the Debtor.
 13 Q. And what is that range of value?
 14 MS. WEISGERBER: Objection to
 15 form.
 16 A. Our understanding, again, based
 17 on those conversations, is that the
 18 general unsecured claim could be valued in
 19 a 75 to 80 cents on the dollar recovery.
 20 And then a, you know, that the junior
 21 class claim is really sort of upside
 22 potential, to the extent there is more
 23 recovery or more asset value of the
 24 estate, for the benefit of creditors over
 25 time.

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1 Confidential - Pugatch
 2 Q. What is your understanding of
 3 the current value of the HarbourVest
 4 shares in HCLOF that would be transferred
 5 under this Agreement?
 6 A. It's roughly \$22.5 million of
 7 their value.
 8 Q. So doing a little bit of, you
 9 know, back-of-the-table-cloth math, how do
 10 you allocate value between the releases
 11 that you are receiving and the shares that
 12 you are transferring?
 13 MR. KANE: I'm sorry. Let me
 14 rephrase that. Let me ask that
 15 question differently.
 16 Q. In addition to the claims under
 17 the plan, HarbourVest is providing the
 18 Debt – sorry, in addition to the shares
 19 that are being transferred, HarbourVest is
 20 providing to the Debtor certain releases
 21 for its litigation claims; is that
 22 correct?
 23 MS. WEISGERBER: Objection to
 24 form.
 25 A. Correct.

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 2 interest and the release of the claims
 3 that we had outstanding as the Debtor.
 4 MR. KANE: Now, I want to turn
 5 your attention to what I've included
 6 in the chat. You can pull it down
 7 pretty easily if you want. But it
 8 would be Holdco Depo Exhibit 2. If
 9 that would be easier than a screen
 10 share, if you'd like, I'm happy to do
 11 that as well.
 12 MS. WEISGERBER: Which document
 13 is it, John? Because I just can't
 14 pull stuff off the Zoom right now.
 15 MR. KANE: Oh, I'm sorry. It's
 16 the Settlement Agreement with the
 17 attached exhibits. I can share my
 18 screen so we're all on the same page.
 19 Just to confirm we're looking at
 20 the same thing, here's the Settlement
 21 Agreement. There's a docket entry at
 22 the top so you can see it, 1631 filed
 23 by the Debtor 12/24/20.
 24 This is Exhibit 1 to the
 25 Declaration of John Morris in Support

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 2 Q. So how has HarbourVest allocated
 3 value, as far as this Settlement Agreement
 4 is concerned?
 5 And to make sure we're on the
 6 same page about what I'm asking,
 7 HarbourVest is trading a bundle of sticks,
 8 right? And there's really two things
 9 within that bundle of sticks, and please
 10 confirm that's correct, you're trading
 11 shares, and in addition, releases; is that
 12 right? In exchange you're getting back
 13 claims that have a potential future value.
 14 So, how have you allocated value
 15 among the shares transferred and the
 16 releases that are being granted?
 17 MR. MORRIS: Objection.
 18 MS. WEISGERBER: Objection.
 19 You can go ahead, Mike.
 20 A. Yeah. So ultimately we looked
 21 at it as a package, and so it was less
 22 about the attribution of value between the
 23 two different sticks, as you described it,
 24 and more about the overall package value
 25 in exchange for the transfer of our

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 2 of Debtor's Motion for an Entry
 3 Approving Settlement with HarbourVest.
 4 BY MR. KANE:
 5 Q. Now, this Settlement Agreement
 6 is a document that you assisted in
 7 negotiations; is that correct?
 8 A. Correct.
 9 Q. Okay. And here in Section 1B,
 10 this addresses the transfer of the shares
 11 of the HarbourVest entities to a Debtor
 12 affiliate; is that correct?
 13 MS. WEISGERBER: Objection to
 14 form.
 15 A. Correct.
 16 Q. Is that your understanding,
 17 Mr. Pugatch?
 18 A. Yes, correct.
 19 Q. Okay. Thank you. Section 4A,
 20 and is this your understanding that
 21 HarbourVest is representing that it has
 22 the authority to enter into this agreement
 23 and to transfer the shares to the Debtor's
 24 affiliate if this is approved?
 25 MS. WEISGERBER: Objection to

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 2 form. The document speaks for itself.
 3 Is that a question, John?
 4 MR. KANE: Yeah. I asked if
 5 that was his understanding, that this
 6 is a representation by HarbourVest
 7 that it has the authority to transfer
 8 the shares if the Settlement Agreement
 9 is approved.
 10 MS. WEISGERBER: Objection to
 11 form. Objection to the extent it
 12 calls for a legal conclusion.
 13 To the extent you have a
 14 nonlegal conclusion, non-privileged
 15 understanding, Mike, you can share
 16 that.
 17 A. Yeah, I'm just saying I can only
 18 answer that based on conversations with
 19 counsel.
 20 MR. KANE: Okay. I won't push
 21 that. That's fine.
 22 Q. If we keep going down here as
 23 part of this attachment, there's a
 24 Transfer Agreement, Exhibit A to the
 25 Settlement Agreement. Are you familiar

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 2 that correct?
 3 MS. WEISGERBER: Same objection.
 4 I think you can give your
 5 general understanding, but then not
 6 get into specific conversations.
 7 A. My understanding of that is
 8 based on conversations with counsel, but
 9 yes, that is my understanding, John.
 10 Q. Okay. I'm going to highlight a
 11 passage here. Can you see this
 12 highlighted area? "Whereas, the Portfolio
 13 Manager desires to consent to such
 14 transfers and to the admission of
 15 Transferee as a shareholder..."
 16 Were you aware of that
 17 provision?
 18 MS. WEISGERBER: Objection to
 19 form.
 20 A. Yes. It's in the document.
 21 Q. Do you have any understanding of
 22 why that provision was included in this
 23 agreement?
 24 MS. WEISGERBER: Objection to
 25 form. Objection to the extent it

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 2 with this document?
 3 A. Yes. I've seen it.
 4 Q. And did you assist with the
 5 preparation or negotiation of this
 6 Agreement?
 7 A. Yes.
 8 Q. Okay. Did you understand that
 9 HarbourVest would need the consent of the
 10 HCLOF portfolio advisor to effectuate the
 11 transfer?
 12 MS. WEISGERBER: Objection to
 13 form. Objection to the extent it
 14 calls for a legal conclusion.
 15 Mike, if you have a view other
 16 than from privileged conversation, you
 17 can answer, otherwise do not answer.
 18 A. Yeah, I'm sorry. I can only
 19 answer that based on conversation with
 20 counsel and the read of the document.
 21 Q. So to make sure I understand
 22 that, you have no independent
 23 understanding of whether or not consent
 24 was required from the portfolio manager
 25 before you could effectuate a transfer; is

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 2 calls for a privileged conversation.
 3 A. As I answered before, based on
 4 conversations with counsel, my
 5 understanding is that consent is requiring
 6 in connection to transfer.
 7 Q. I'd like to turn your attention
 8 now – this is a document you've seen
 9 before during your deposition. This is
 10 the member's agreement related to the
 11 Company for HCLOF. This is previously
 12 produced by the Debtor, that's why it's
 13 got the Bates stamp on it. This is dated
 14 November 15, 2017.
 15 Are you familiar with this
 16 document?
 17 A. Yes.
 18 Q. Do you see on Line 14, in the
 19 between, on Page 1 shows Highland HCF
 20 Advisor, Ltd. as the portfolio manager?
 21 A. Yes, I see that.
 22 Q. I know there was quite a bit
 23 of – quite a few questions about this
 24 earlier, but you understand that Highland
 25 HCF Advisor, Ltd. is still the HCLOF

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1 Confidential - Pugatch
 2 portfolio manager?
 3 MS. WEISGERBER: Objection to
 4 form.
 5 A. Honestly, I don't have -- I
 6 don't have enough information to answer
 7 that definitively.
 8 Q. Okay. Going back to the
 9 Settlement Agreement, there's a reference
 10 in here to a defined term, "portfolio
 11 manager."
 12 Do you see that?
 13 A. Yep.
 14 Q. And is this the same one that's
 15 listed in the Member Agreement, Highland
 16 HCF Advisor, Ltd.?
 17 A. I believe that seems to be the
 18 position, yes.
 19 Q. Okay. So when we're talking
 20 about down here, "Whereas, the Portfolio
 21 Manager desires to consent," this consent
 22 provision is referring to the same
 23 definition of portfolio manager that's
 24 included in this Member Agreement; is that
 25 correct?

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 2 Q. All right. Are you familiar
 3 with Section 6 of this Member Agreement?
 4 A. (Nods.)
 5 Q. Have you ever read this
 6 document?
 7 A. I have.
 8 Q. Okay. And can you give me your
 9 understanding of what must take place
 10 under this document for HarbourVest to
 11 transfer its shares?
 12 MS. WEISGERBER: Object to the
 13 form. Object to the extent it calls
 14 for a legal conclusion. Object to the
 15 extent it calls for any privileged
 16 information or conversations.
 17 Mike, to the extent you have an
 18 independent understanding, separate
 19 from conversations with counsel, you
 20 can answer the question.
 21 A. I would say my understanding of
 22 what's required in connection with the
 23 transfer is based on conversations with
 24 counsel.
 25 Q. Do you believe that the

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 2 MR. MORRIS: Objection to the
 3 form.
 4 MS. WEISGERBER: Objection --
 5 same objections. Objection to the
 6 extent it calls for privileged
 7 information.
 8 A. That sounds like a legal
 9 conclusion.
 10 Q. I would have thought it was
 11 reading, Mr. Pugatch.
 12 A. Well, if you're asking me to
 13 definitively confirm that, that sounds
 14 like a legal interpretation.
 15 Q. Let me ask that a different way.
 16 Do you understand that the
 17 portfolio manager is listed as Highland
 18 HCF Advisor, Ltd. in the Member Agreement?
 19 A. Yes.
 20 Q. And in this Transfer Agreement,
 21 the portfolio manager is listed as
 22 Highland HCF Advisor, Ltd.?
 23 A. Yes.
 24 Q. And those are the same entities?
 25 A. Yes.

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 2 HarbourVest entities can transfer its
 3 shares without obtaining the consent of
 4 the portfolio manager?
 5 MS. WEISGERBER: Objection to
 6 form. Objection to the extent it
 7 calls for a legal conclusion.
 8 Same instruction, Mike, as to
 9 privileged conversations.
 10 A. Again, my view on that would be
 11 based on conversations with counsel.
 12 Q. Are you aware of whether
 13 HarbourVest provided any notice to other
 14 members of its intent to transfer its
 15 shares to the Debtor's affiliate under the
 16 Settlement Agreement, other than the
 17 filing of the 9019 motion?
 18 MS. WEISGERBER: Same objection.
 19 But there is a factual question in
 20 there if you can answer it, Mike, but
 21 no privileged conversation.
 22 A. Yeah, I'm not aware of that.
 23 Q. Did you provide members 30 days
 24 after the receipt of notice of
 25 HarbourVest's intent to transfer its

<p style="text-align: right;">Page 138</p> <p>1 Confidential - Pugatch 2 shares to the Debtor's affiliate and 3 provide those members with an opportunity 4 to purchase their pro rata amount of the 5 shares? 6 MS. WEISGERBER: Same objection. 7 A. No. 8 Q. And just to make sure I'm not 9 asking this question in a way that you 10 don't understand what I'm asking: Do you 11 see this highlighted provision here? 12 A. Yes. 13 Q. I'm asking whether HarbourVest 14 provided members 30 days after the receipt 15 of a notice letter and an opportunity to 16 purchase their entire pro rata share of 17 the shares proposed to be transferred by 18 the HarbourVest entities? 19 MS. WEISGERBER: Objection to 20 form. Objection to the extent it 21 calls for privileged conversations or 22 a legal conclusion. Objection to the 23 extent it's asking about one piece of 24 the document. 25 And you're welcome to look at</p>	<p style="text-align: right;">Page 139</p> <p>1 Confidential - Pugatch 2 the full document if you'd like, Mike. 3 I think it was one of the ones that 4 was E-mailed as well, or maybe you 5 were able to pull it down. 6 THE WITNESS: Yeah, no, I was. 7 Thank you. 8 A. And I'm sorry, John, could you 9 just repeat the question? 10 BY MR. KANE: 11 Q. Yeah, sure, absolutely. And I'm 12 not calling for any conversations with 13 counsel. I'm asking you if you know 14 whether HarbourVest did something or not. 15 So let's -- let's keep it to that, because 16 I -- 17 MR. KANE: Erica, I appreciate 18 your concerns, but I really don't want 19 to have any disclosures from Mike 20 about his discussions with you on 21 whether something needed to be done or 22 not. I'm asking simply the facts of 23 whether HarbourVest did it or not. 24 Q. So did HarbourVest provide 25 notice, 30 days' notice, to the members</p>
<p style="text-align: right;">Page 140</p> <p>1 Confidential - Pugatch 2 listed under this Member Agreement of 3 HarbourVest's intent to transfer the 4 shares that are the subject to the 5 Settlement Agreement? 6 A. No. 7 Q. Has HarbourVest provided any 8 members with a right of first refusal and 9 a cash purchase price for which it would 10 sell its shares instead of transferring 11 those shares to the Debtor or the Debtor's 12 affiliate under the Settlement Agreement? 13 MS. WEISGERBER: Same 14 objections. Objection to form. 15 Objection to extent it calls for a 16 legal conclusion or privileged 17 conversations, including -- regarding 18 the specifics of that provision. 19 I don't think that's a purely 20 factual question. 21 Q. Did HarbourVest offer to sell 22 the shares to the other members? That's 23 not a factual question? 24 MS. WEISGERBER: Objection -- 25 A. On the basis of that factual</p>	<p style="text-align: right;">Page 141</p> <p>1 Confidential - Pugatch 2 question, no. 3 Q. So let me ask this question 4 again, I don't recall if I got an answer 5 or not. 6 Did HarbourVest affirmatively 7 seek to obtain the consent of Highland HCF 8 Advisors to transfer its shares to the 9 Debtor affiliate under the Settlement 10 Agreement? 11 MS. WEISGERBER: Same 12 objections. Same instruction 13 regarding the privileged conversation. 14 A. I mean, as a Highland-affiliated 15 entity, the Debtor, who's obviously the 16 other party here involved in the transfer, 17 you know, was involved in these 18 discussions. 19 Q. I'm sorry. Would you mind 20 clarifying? Did you say that Highland HCF 21 Advisors was involved in those discussions 22 or the Debtor was involved in those 23 discussions and you assume Highland HCF 24 Advisors was? 25 MS. WEISGERBER: Objection to</p>

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 2 form. Misstates testimony.
 3 A. Sorry, could you just repeat the
 4 question, please, John?
 5 Q. Yes, Mr. Pugatch.
 6 I'm actually just trying to get
 7 some clarification from you, because I
 8 don't think I understood your answer
 9 about -- I had asked just -- again, I
 10 don't want any correspondence with your
 11 counsel or what your counsel advised, I'm
 12 asking: Do you know whether HarbourVest
 13 sought written consent from Highland HCF
 14 Advisor for its -- or to transfer its
 15 shares to the Debtor or the Debtor's
 16 affiliate under the Settlement Agreement?
 17 MS. WEISGERBER: Same objection.
 18 A. My understanding is HarbourVest
 19 did not explicitly have those
 20 conversations or seek that consent.
 21 Q. Okay. Are you aware of whether
 22 HarbourVest received any written consent
 23 from Highland HCF Advisors, other than
 24 what's in the Transfer Agreement attached
 25 to the Settlement Agreement?

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 2 provide consent, whether written or
 3 otherwise, to the transfer?
 4 A. I am not aware that that consent
 5 has been provided as of yet.
 6 Q. Are you aware of whether any
 7 HarbourVest representatives have had
 8 conversations with the Debtor's
 9 representatives about the necessity of
 10 consent to the transfer of their shares?
 11 MS. WEISGERBER: Objection to
 12 form --
 13 MR. KANE: I'll re-ask the
 14 question. I want to clarify that
 15 point.
 16 BY MR. KANE:
 17 Q. Mr. Pugatch, are you aware of
 18 whether any HarbourVest representatives
 19 had conversations with the Debtor's
 20 representatives about the necessity of
 21 obtaining the HCLOF portfolio manager's
 22 written consent before transferring the
 23 shares to the Debtor's representative or
 24 affiliate under the terms of the
 25 Settlement Agreement?

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 2 A. I am not.
 3 MS. WEISGERBER: Same objection.
 4 Q. Do you know if HarbourVest has
 5 any written consent? Not just to seek it,
 6 but do you know if HarbourVest has a piece
 7 of paper, other than the transfer
 8 agreement, in which Highland HCF advisors
 9 provided its consent to the transfer of
 10 shares to the Debtor's affiliate?
 11 MS. WEISGERBER: Same
 12 objections.
 13 A. I would have to speak with
 14 counsel. I am not aware of that directly,
 15 no.
 16 Q. Are you aware of whether
 17 HarbourVest had any correspondence with
 18 HCLOF representatives about effectuating
 19 the transfer of the shares to the Debtor's
 20 affiliate under the Settlement Agreement?
 21 MS. WEISGERBER: Same objection.
 22 You can answer.
 23 A. We have had discussions with
 24 them, yes.
 25 Q. Did HCLOF representatives

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 2 MS. WEISGERBER: Objection to
 3 form.
 4 And, John, I'm sorry to do this,
 5 can you just clarify what you mean by
 6 "representative"?
 7 MR. KANE: Yeah. I mean,
 8 anybody that has agency authority to
 9 act on behalf of the Debtor in
 10 negotiations, in the preparation of
 11 the documents, in negotiation of the
 12 terms of the Settlement Agreement.
 13 I mean, I think that it's, you
 14 know, a pretty broad term here.
 15 MS. WEISGERBER: Objection to
 16 form. Objection to the extent it
 17 calls for discussions with counsel.
 18 As a factual matter, if you have
 19 an answer, you can give it.
 20 A. I'm aware of conversations that
 21 have taken place about all of the terms of
 22 the Transfer Agreement in connection with
 23 the settlement, with all parties.
 24 Q. Is it your understanding based
 25 on those conversations that written

<p>Page 146</p> <p>1 Confidential - Pugatch</p> <p>2 consent of the portfolio manager as</p> <p>3 defined in the Transfer Agreement was</p> <p>4 required before the shares could be</p> <p>5 transferred under the Settlement</p> <p>6 Agreement?</p> <p>7 MS. WEISGERBER: Objection to</p> <p>8 the form. Objection to the extent it</p> <p>9 calls for a legal conclusion or</p> <p>10 privileged conversation. And I think</p> <p>11 that one does, John.</p> <p>12 A. Yeah, I can only answer that</p> <p>13 based on conversation with lawyers.</p> <p>14 Q. Wasn't the question whether --</p> <p>15 I'm sorry. Maybe I forgot my own</p> <p>16 question.</p> <p>17 But I thought it was based on</p> <p>18 your conversations with the Debtor's</p> <p>19 representative, was it your understanding,</p> <p>20 not based on your conversation with</p> <p>21 counsel.</p> <p>22 MS. WEISGERBER: Can you repeat</p> <p>23 the whole question because I</p> <p>24 definitely misunderstood it then too.</p> <p>25 Q. Okay. Based on your</p>	<p>Page 147</p> <p>1 Confidential - Pugatch</p> <p>2 conversations with the Debtor's</p> <p>3 representatives, was it your understanding</p> <p>4 that the consent of the portfolio manager</p> <p>5 was required for the shares to be</p> <p>6 transferred from the HarbourVest entities</p> <p>7 to the Debtor's affiliate under the terms</p> <p>8 of the Settlement Agreement?</p> <p>9 MS. WEISGERBER: Okay. Same</p> <p>10 objections. Also objection to the</p> <p>11 extent there is a common interest</p> <p>12 privilege.</p> <p>13 A. I don't recall having that</p> <p>14 explicit conversation with representative</p> <p>15 of the Debtor.</p> <p>16 MR. KANE: I'll pass the</p> <p>17 witness.</p> <p>18 Thank you, Mr. Pugatch.</p> <p>19 MR. MORRIS: Anybody else?</p> <p>20 Thank you, all.</p> <p>21 MS. WEISGERBER: Can we --</p> <p>22 before we break, could we have a</p> <p>23 two-minute break and then come back</p> <p>24 before we conclude.</p> <p>25 BY MS. WEISGERBER:</p>
<p>Page 148</p> <p>1 Confidential - Pugatch</p> <p>2 Q. Mr. Pugatch, during Mr. Wilson's</p> <p>3 questioning, I believe his last question</p> <p>4 related to identifying as between two</p> <p>5 choices the primary source or the cause of</p> <p>6 HarbourVest's damages.</p> <p>7 In your opinion, is -- are</p> <p>8 HarbourVest damages attributable to any</p> <p>9 one cause?</p> <p>10 A. No, I would say there were</p> <p>11 multiple root causes of the damages and</p> <p>12 diminution in value that was suffered in</p> <p>13 connection with the investment.</p> <p>14 MS. WEISGERBER: Okay. I don't</p> <p>15 have any further questions.</p> <p>16 MR. WILSON: I think I'd like to</p> <p>17 ask a couple more.</p> <p>18 BY MR. WILSON:</p> <p>19 Q. Mr. Pugatch, I think you</p> <p>20 testified earlier that the investment in</p> <p>21 HCLOF was comprised of multiple CLOs,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And some of those CLOs were</p> <p>25 managed by Acis, to your understanding?</p>	<p>Page 149</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection.</p> <p>3 A. Correct.</p> <p>4 MS. WEISGERBER: Just to</p> <p>5 clarify, John, is this within the</p> <p>6 scope of the questions I asked</p> <p>7 Mr. Pugatch?</p> <p>8 MR. WILSON: I believe it is.</p> <p>9 I'm going to be really short. But</p> <p>10 so --</p> <p>11 MS. WEISGERBER: I would like to</p> <p>12 have a standing objection to the</p> <p>13 extent it's not within the scope of</p> <p>14 the questions that was asked to</p> <p>15 Mr. Pugatch.</p> <p>16 BY MR. WILSON:</p> <p>17 Q. So some of those CLOs you</p> <p>18 contend are managed by Acis?</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form.</p> <p>21 A. A majority.</p> <p>22 Q. And just generally, do you</p> <p>23 contend that Highland managed the balance</p> <p>24 of those CLOs?</p> <p>25 MR. MORRIS: Objection to the</p>

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 2 form of the question.
 3 MS. WEISGERBER: Objection.
 4 Same objection.
 5 A. Yes.
 6 Q. Yes. Okay. Thank you.
 7 And I just had two more
 8 questions.
 9 So, if there was going to be a
 10 reset, that would have to be done at the
 11 CLO level, each CLO would have to be
 12 reset?
 13 MR. MORRIS: Objection.
 14 MS. WEISGERBER: Objection to
 15 form.
 16 A. That is correct.
 17 Q. And do you know of any specific
 18 CLO that requested a reset but was not
 19 granted a reset?
 20 MR. MORRIS: Objection to form.
 21 MS. WEISGERBER: Same objection.
 22 And foundation.
 23 A. When you say "CLOs who requested
 24 a reset," can be more clear, please?
 25 Q. We just talked about how this

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 2 up, John.
 3 MR. WILSON: This was my last
 4 question, I just need an answer to it.
 5 And I think he tried to answer, but I
 6 didn't understand what he said.
 7 MS. WEISGERBER: Objection. Can
 8 you re-ask the question so we have a
 9 clear question.
 10 MR. WILSON: Well, Madam Court
 11 Reporter, can you read back his last
 12 response?
 13 (Record read.)
 14 BY MR. WILSON:
 15 Q. Can you repeat what you intended
 16 to answer to the last question?
 17 MS. WEISGERBER: Same objection.
 18 If you recall, Mike.
 19 A. I'm sorry, John. Can you just
 20 repeat the question, please, make sure I'm
 21 answering what you want me to answer.
 22 Q. My question is the same as it's
 23 been: Are you aware of any CLO that
 24 requested a reset and was not granted one?
 25 MS. WEISGERBER: Objection to

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 2 investment is comprised of multiple CLOs
 3 and each one of those CLOs would have to
 4 be reset, according to its own terms, I
 5 guess. Do you know of any one of those
 6 CLOs that requested a reset?
 7 MR. MORRIS: Objection to the
 8 form of the question.
 9 MS. WEISGERBER: Same objection.
 10 A. I'm aware of Highland having in
 11 its capacity as manager of the HCLOF
 12 having requested or pursued resets of
 13 certain of the Acis HCLOs.
 14 Q. Your understanding is that
 15 Highland requested a reset of the Acis
 16 CLOs?
 17 MS. WEISGERBER: Objection to
 18 form.
 19 A. I'm sorry. I'm trying to
 20 understand what you said.
 21 MS. WEISGERBER: I'm really
 22 wondering how this relates at all to
 23 the scope of the questions I asked Mr.
 24 Pugatch on follow up.
 25 I think it's time to wrap this

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1 Confidential - Pugatch
 2 form. Objection to foundation.
 3 MR. MORRIS: Objection to the
 4 form of the question.
 5 A. Again, my understanding is the
 6 CLOs do not request the reset. Highland,
 7 as manager of HCLOF in its capacity as
 8 majority equity owner of certain of the
 9 CLOs, have requested a reset post our
 10 original investment.
 11 Q. Okay.
 12 MR. WILSON: I'll pass the
 13 witness.
 14 MS. WEISGERBER: I think we're
 15 done.
 16 THE REPORTER: Will everyone put
 17 their orders on the record, please?
 18 MR. MORRIS: John Morris for the
 19 Debtor. Expedited, please.
 20 MR. WILSON: John Wilson. I'm
 21 not sure what arrangements my office
 22 has previously made, but we want an
 23 expedited transcript, as well.
 24 THE REPORTER: Do you want a
 25 rough too?

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1 Confidential - Pugatch
 2 MR. WILSON: Yes, please.
 3 MR. MORRIS: Yes, please.
 4 MS. WEISGERBER: Same for
 5 HarbourVest, please.
 6 MR. MALONEY: I don't need an
 7 expedited transcript. I'd just be
 8 happy to get one regular copy. I'll
 9 take whatever you would produce in the
 10 ordinary course. Same as what
 11 everyone else ordered.
 12 (Time Noted: 4:35 p.m. EDT.)
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1
 2 CERTIFICATE OF SHORTHAND REPORTER-NOTARY
 3 PUBLIC
 4 I, Amanda Gorrone, the officer
 5 before whom the foregoing deposition
 6 was taken, do hereby certify that the
 7 foregoing transcript is a true and
 8 correct record of the testimony given;
 9 that said testimony was taken by me
 10 stenographically and thereafter
 11 reduced to typewriting under my
 12 direction; and that I am neither
 13 counsel for, related to, nor employed
 14 by any of the parties to this case and
 15 have no interest, financial or
 16 otherwise, in its outcome.
 17 IN WITNESS WHEREOF, I have
 18 hereunto set my hand this 12th day of
 19 January, 2021.
 20
 21 _____
 22 AMANDA GORRONE, CLR
 23 CLR NO: 052005 - 01
 24 Notary Public in and for the State of New
 25 York
 County of Suffolk

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1
 2 ACKNOWLEDGEMENT OF DEPONENT
 3
 4 I, MICHAEL PUGATCH, do hereby
 5 acknowledge that I have read and
 6 examined the foregoing testimony, and
 7 the same is a true, correct and
 8 complete transcription of the
 9 testimony given by me, and any
 10 corrections appear on the attached
 11 Errata sheet signed by me.
 12
 13
 14 _____
 15 (DATE) (SIGNATURE)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 ERRATA SHEET
 2 Case Name:
 3 Deposition Date:
 4 Deponent:
 5 Pg. No. Now Reads Should Read Reason
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20
 21 _____
 Signature of Deponent
 22 SUBSCRIBED AND SWORN BEFORE ME
 23 THIS ___ DAY OF _____, 20__.
 24 _____
 25 (Notary Public) MY COMMISSION EXPIRES: _____

<p>\$</p> <p>\$1,570,429 27:23</p> <p>\$1.02 112:19</p> <p>\$135 28:25 30:2</p> <p>\$150 112:23</p> <p>\$22.5 126:6</p> <p>\$295,000 93:23 94:22 95:7 104:14</p> <p>\$35 110:2 125:2</p> <p>\$4,998,501 27:20</p> <p>\$44,587,820 59:3</p> <p>\$44.5 112:14</p> <p>\$45 109:25 124:24</p> <p>\$5 108:22</p> <p>\$73 56:25</p> <p>\$73,522,928 27:14</p> <p>\$8 78:2</p> <hr/> <p>(</p> <hr/> <p>(i) 42:22</p> <hr/> <p>0</p> <hr/> <p>08/15/2017 68:7</p> <hr/> <p>1</p> <hr/> <p>1 16:4,7 19:17 31:21 59:10 61:14,15 109:23 114:22 128:24 133:19</p> <p>10 60:11,15 83:19,20 84:3,6 97:22 99:5 103:23</p> <p>10/10/2018 83:22</p> <p>100 64:5,11,15</p> <p>1057 22:23 45:12</p> <p>11 32:2 35:9 36:12 51:19 52:22 109:4,5, 15</p>	<p>11/29/2017 79:3</p> <p>12/24/20 128:23</p> <p>122 61:9</p> <p>135 28:10</p> <p>14 33:10 133:18</p> <p>143 14:21 16:8,11 109:9 112:21</p> <p>144 14:22</p> <p>147 109:9</p> <p>149 14:23 17:3,17 109:10</p> <p>15 27:11 33:22,24 50:13 55:17 60:11,15 64:4 69:2 112:18,23 133:14</p> <p>150 14:24 109:10</p> <p>153 14:25 109:10</p> <p>154 15:3 109:10</p> <p>15th 50:14</p> <p>1631 109:18 128:22</p> <p>17 50:13</p> <p>1:20 60:22</p> <p>1B 129:9</p> <p>1st 55:22 91:7</p> <hr/> <p>2</p> <hr/> <p>2 16:22,23 17:2,10,24 26:12 31:21 92:4 128:8</p> <p>2004 83:20 84:12,18 99:17</p> <p>2017 14:23 16:13 21:18 23:14 24:3 27:11 33:22,25 50:13,14 51:20 52:21 55:17 64:5 69:2 85:4 112:18,24 133:14</p> <p>2018 84:7 86:18 90:24 97:22 103:23 105:10,25</p> <p>2019 59:11 90:24 91:7 107:14 114:22</p>	<p>2020 16:12 59:3 109:21 112:13</p> <p>217 14:22</p> <p>23 109:20</p> <p>27 51:20 52:21</p> <p>27th 51:19</p> <p>28 21:3</p> <p>28th 81:17</p> <p>2:30 112:6</p> <hr/> <p>3</p> <hr/> <p>3 18:18,19,24 26:10 28:7 58:25</p> <p>30 137:23 138:14 139:25</p> <p>30(b)(6) 15:13</p> <p>3018(a) 18:22 19:8</p> <p>31 59:3 63:8 112:13</p> <p>35.49 65:14</p> <p>36 55:9</p> <p>37 45:16 53:7</p> <p>382 9:12</p> <p>39 54:25</p> <hr/> <p>4</p> <hr/> <p>4 20:25 21:2 33:9 37:13,22 51:18 84:24 93:15</p> <p>4.1 37:24</p> <p>4.2 42:21</p> <p>4.3 38:23 40:2 44:13, 22</p> <p>4/08/2020 16:8 17:3</p> <p>40,000 90:25</p> <p>410 17:7</p> <p>47 13:4</p> <p>49 27:15 65:24</p> <p>49.02 66:5</p>	<p>49.98 27:16 65:20 66:3</p> <p>49.985% 85:5</p> <p>4A 129:19</p> <hr/> <p>5</p> <hr/> <p>5 16:16 22:15,16,17 37:13,21,22 45:11 95:11 96:24 110:14</p> <p>50 20:11</p> <hr/> <p>6</p> <hr/> <p>6 61:5,8 84:23 136:3</p> <p>617 22:19</p> <p>63 67:14</p> <hr/> <p>7</p> <hr/> <p>7 63:4,6,7 95:9 112:17</p> <p>75 125:19</p> <hr/> <p>8</p> <hr/> <p>8 16:12 23:14 62:3 68:3,6</p> <p>80 125:19</p> <p>82 109:11</p> <hr/> <p>9</p> <hr/> <p>9 78:21 79:2 95:24</p> <p>9019 11:2 15:8 98:3 109:17 122:13 137:17</p> <hr/> <p>A</p> <hr/> <p>ability 42:16 54:7,13, 17,18,20,23 95:16 96:9,20 98:10,11 105:18 119:12,20</p> <p>absolutely 49:24 82:19 139:11</p>	<p>accept 110:17</p> <p>accordance 59:7 103:9</p> <p>accurate 33:14 93:24</p> <p>accusations 81:7</p> <p>Acis 31:22,23,24 32:4,5,12,14,24 35:2 36:11,13,24 46:10, 15,21 47:9,14,22 48:11 49:4,10,14,20 50:2,11 51:11 52:21 53:4,5 74:3 84:5 85:16 86:19,23 87:4, 13,22 88:7,11,19 89:11 90:8,17 91:2,6, 20 92:4,5,7,8,14,15, 20 93:3,18 94:12 96:5,6,7,10,11,22 97:3 101:15 104:13 105:9 107:15,23 108:3 114:6,21 115:6,20 116:23 118:16 121:6 148:25 149:18 151:13,15</p> <p>Acis' 51:20</p> <p>Acis-branded 35:6</p> <p>Acis-managed 35:5</p> <p>Acis/hclocf 11:11,12</p> <p>acquiring 63:22</p> <p>act 40:3 145:9</p> <p>action 40:5 56:16</p> <p>actionable 72:16</p> <p>actions 39:4,9,13 40:23 42:18,21 91:21 109:11 114:9</p> <p>actively 122:16</p> <p>activities 53:15</p> <p>actual 113:14</p> <p>add 58:18</p> <p>added 111:9</p> <p>addition 126:16,18 127:11</p> <p>additional 27:20 28:3 57:16 58:8,16 95:13</p>
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APPENDIX 8

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

In re:	)	Chapter 11
)	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	)	Case No. 19-34054-sgj11
)	
Debtor.	)	Re: Docket Nos. 1625, 1697, 1706,
	)	1707

**DEBTOR’S OMNIBUS REPLY IN SUPPORT OF DEBTOR’S MOTION FOR
ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST
(CLAIM NOS. 143, 147, 149, 150, 153, 154), AND AUTHORIZING ACTIONS
CONSISTENT THEREWITH**

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.



The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby submits this reply (the “Reply”) in support of its *Motion for Entry of an Order Approving Settlement with HarbourVest (Claim No.143,147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the “Motion”).² In further support of the Motion, the Debtor respectfully states as follows:

PRELIMINARY STATEMENT

1. If granted, the Motion will resolve a \$300 million general unsecured claim against the Debtor’s estate for less than \$16.8 million in actual value.³ The settlement is another solid achievement for the Debtor and – not surprisingly – is opposed by no one except Mr. Dondero and entities affiliated with him.

2. As discussed in the Motion, in November 2017, HarbourVest invested \$80 million in exchange for a 49.98% membership interest in HCLOF – an entity managed by a subsidiary of the Debtor. The balance of HCLOF’s interests are held by CLO Holdco, Ltd. (an entity affiliated with Mr. Dondero), the Debtor, and certain of the Debtor’s employees. Subsequent to its investment in HCLOF, HarbourVest incurred substantial losses on its investment in HCLOF and filed claims against the Debtor’s estate.

3. HarbourVest asserts claims for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty

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

³ Under the proposed settlement, HarbourVest would receive an allowed, general unsecured claim of \$45 million and an allowed, subordinated claim of \$35 million. Based on the estimated recovery for general unsecured creditors of 87.44% (which is a recovery based on certain outdated assumptions discussed *infra*), HarbourVest’s \$45 million general unsecured claim is estimated to be worth approximately \$39.3 million and the \$35 million subordinated claim, which is junior to the general unsecured claim, is currently estimated to have value only if there are litigation recoveries. In addition, HarbourVest is transferring to an affiliate of the Debtor its interest in HCLOF, which is estimated to be worth approximately \$22.5 million. Thus, HarbourVest’s estimated recovery on its general unsecured and subordinated claims is estimated at approximately \$16.8 million on a net economic basis. This estimate, however, is dated and is based on the claims that were settled as of the filing of the Debtor’s plan in November 2020.

and unfair prejudice (under Guernsey law), violations of state securities laws, and RICO. In furtherance of these claims, HarbourVest alleges it was misled by the Debtor and its employees, including Mr. Scott Ellington (then the Debtor's general counsel), and that subsequent to investing in HCLOF, Mr. Dondero and the Debtor used HCLOF both as a piggybank to fund the litigation against Acis Capital Management, L.P. ("Acis") and as a scapegoat for the Debtor's litigation strategy, in each case to HarbourVest's substantial detriment.

4. Specifically, HarbourVest alleges that:

- the Debtor and its employees, including Mr. Ellington, misled HarbourVest about its intentions with respect to Mr. Terry's arbitration award against Acis and orchestrated a series of fraudulent transfers and corporate restructurings, the true purpose of which was to denude Acis of assets and make it judgment proof;
- the Debtor and its employees, including Mr. Ellington, misled HarbourVest as to the intent and true purpose of these restructurings and led HarbourVest to believe that Mr. Terry's claims against Acis were meritless and a simple employment dispute that would not affect HarbourVest's investment;
- the Debtor, through Mr. Dondero, improperly exercised control over or misled HCLOF's Guernsey-based board of directors to cause HCLOF to engage in unnecessary, unwarranted, and resource-draining litigation against Acis;
- the Debtor improperly caused HCLOF to pay substantial legal fees of various entities in the Acis bankruptcy that were unwarranted, imprudent, and not properly chargeable to HCLOF; and
- the Debtor used HarbourVest as a scapegoat in its litigation against Acis by asserting that the Debtor's improper conduct and scorched-earth litigation strategy was at HarbourVest's request, which was untrue.

5. The Debtor believed, and continues to believe, that it has viable defenses to HarbourVest's claims. Nevertheless, those defenses would be subject to substantial factual disputes and would require expensive and time-consuming litigation that would likely be resolved only after a lengthy trial all while the Debtor (or its successor) assumes the risk that the defenses might fail. The evidence will show that the proposed settlement is the product of substantial, arm's length – and sometimes quite heated – negotiations between and among the

principals and their counsel. The evidence will also show that one of HarbourVest's primary concerns in settling its claim was that part of that settlement would include the extrication of HarbourVest from the Highland web of entities and the related litigation. The proposed settlement accomplishes that and does so in compliance with HCLOF's governing agreements.

6. Pursuant to the proposed settlement, (a) HarbourVest will receive (i) an allowed, general unsecured claim in the amount of \$45 million, and (ii) an allowed, subordinated claim in the amount of \$35 million; (b) HarbourVest will transfer its 49.98% interest in HCLOF (valued at approximately \$22.5 million) to a wholly-owned subsidiary of the Debtor; and (c) the parties will exchange mutual and general releases. The Debtor believes that the proposed settlement is reasonable and results from the valid and proper exercise of its business judgment. And the Debtor's creditors apparently agree. None of the major parties-in-interest or creditors in this case has objected to the Motion: not the Committee, the Redeemer Committee, Acis, Patrick Daugherty, or UBS.

7. In distinction, the only objecting parties are Mr. Dondero, his family trusts (the Dugaboy Investment Trust ("Dugaboy") and Get Good Trust ("Get Good," and together with Dugaboy, the "Trusts")), and CLO Holdco (a wholly-owned subsidiary of Mr. Dondero's Charitable Donor Advised Fund, L.P. (the "DAF")) (collectively, the "Objectors"). Each of the Objectors has only the most tenuous economic interest in and connection to the Debtor's settlement with HarbourVest. Each of the Objectors is also controlled directly or indirectly by Mr. Dondero who has coordinated each of the Objectors litigation strategies against the Debtor.⁴ Mr. Dondero's efforts to litigate every issue in this case – directly and by proxy – should be rebuffed, and the objections overruled. The following is a brief summary of the objections.

⁴ See *Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* [Adv. Pro. 20-3190-sgj, Docket No. 46], Exhibit Q.

<u>Pleading</u>	<u>Objection/Reservation</u>	<u>Response</u>
<p><i>Objection of James Dondero</i> [Docket No. 1697] (the “<u>Dondero Objection</u>”)</p>	<p>Because HarbourVest was damaged by the injunction entered in Acis, the settlement seeks to revisit this Court’s rulings in Acis.</p>	<p>Mr. Dondero is misdirecting the Court. HarbourVest’s claim arises from the misrepresentations of Mr. Dondero, Mr. Ellington, and others, not this Court’s rulings in Acis, including the failure to disclose the fraudulent transfer of assets.</p>
	<p>The settlement is not fair and equitable because it does not address (1) Acis’s mismanagement, (2) how the Debtor is liable for HarbourVest’s damages, (3) the success on the merits, (4) the costs of litigation, and (5) the Debtor’s ability to realize the value of the HCLOF interests in light of the Acis injunction.</p>	<p>Mr. Dondero ignores the dangers of the litigation and HarbourVest’s claims against the estate for misrepresentation and overestimates the ability to resolve the litigation. The Debtor has assessed the value of the HCLOF interests in light of all factors, including the Acis injunction.</p>
	<p>The HarbourVest settlement represents a substantial windfall to HarbourVest.</p>	<p>Mr. Dondero ignores the economics of this case, which have value breaking in Class 8 (General Unsecured Claims). The value of the settlement is not \$60 million; it is approximately \$16.8 million against a claim of \$300 million. There is no windfall.</p>
	<p>The HarbourVest settlement is improper gerrymandering because it provides HarbourVest with a general unsecured claim and a subordinated claim in order to secure votes for the plan.</p>	<p>The HarbourVest settlement provides for the resolution of HarbourVest’s claim. It is nonsensical to think that the Debtor would reach a settlement with HarbourVest that would include HarbourVest’s rejection of the Debtor’s plan, and there is nothing wrong with requiring acceptance of a plan as part of a settlement. Further, the Debtor does not need HarbourVest’s Class 9 vote to confirm a plan.</p>
<p><i>Objection of the Dugaboy Investment Trust and Get Good Trust</i> [Docket No. 1706] (the “<u>Trusts Objection</u>”)</p>	<p>The settlement represents a radical change in the Debtor’s earlier position on the HarbourVest settlement.</p>	<p>Mr. Dondero ignores the dangers of the litigation and HarbourVest’s claims against the estate for misrepresentation and overestimates the ability to resolve the litigation.</p>
	<p>The settlement appears to buy HarbourVest’s vote.</p>	<p>The HarbourVest settlement provides for the resolution of HarbourVest’s claim. It is nonsensical to think that the Debtor would reach a settlement with HarbourVest that would include HarbourVest’s rejection of the Debtor’s plan, and there is nothing wrong with requiring acceptance of a plan as part of a settlement. Further, the Debtor does not need HarbourVest’s Class 9 vote to confirm a plan.</p>
	<p>No information is provided as to whether the Debtor can acquire HarbourVest’s interest in HCLOF or the value of that interest to the estate.</p>	<p>As discussed below, the HCLOF interest will be transferred to a wholly-owned subsidiary of the Debtor. Mr. Seery will testify as to the benefit of the HCLOF interests to the estate.</p>
<p><i>Objection of CLO Holdco</i> [Docket No. 1707] (“<u>CLOH Objection</u>”)</p>	<p>HarbourVest cannot transfer its interests in HCLOF unless it complies with the right of first refusal.</p>	<p>CLO Holdco misinterprets the operative agreements and tries to create ambiguity where none exists.</p>

8. These objections are just the latest objections filed by Mr. Dondero and his related entities to any attempt by the Debtor to resolve this case,⁵ including the Debtor's settlement with Acis [Docket No. 1087] and the seven separate objections filed by Mr. Dondero and his related entities to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the "Plan").⁶ It will not shock this Court to hear that each of the Objectors is also objecting to the Plan. In contradistinction, the Debtor has heard this Court's admonishments about old Highland's culture of litigation as evidenced by this case, Acis's bankruptcy, and beyond. Although the Debtor has vigorously contested claims when appropriate, the Debtor has also sought to settle claims and limit the senseless fighting. The Debtor has successfully resolved the largest claims against the estate, including the claims of the Redeemer Committee, Acis, and, as recently announced to this Court, UBS. The Debtor would ask this Court to see through the pretense of the Dondero-related entities' objections to the HarbourVest settlement and approve it as a valid exercise of the Debtor's business judgment.

⁵ As an example of Mr. Dondero's litigiousness, on January 12, 2021, Mr. Dondero filed notice that he will be appealing the preliminary injunction entered against him earlier on January 12, 2021.

⁶ (1) *James Dondero's Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1661]; (2) *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization (filed by Get Good Trust, The Dugaboy Investment Trust)* [Docket No. 1667]; (3) *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]; (4) *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]; (5) *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]; (6) *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]; and (7) *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].

REPLY

A. Standing

9. **James Dondero.** In the Dondero Objection, 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 at best. On April 8, 2020, Mr. Dondero filed three unliquidated, contingent claims that he promised to update “in the next ninety days.”⁷ More than nine months later, Mr. Dondero has yet to “update” those claims to assert an actual claim against the Debtor’s estate.⁸

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

11. **Dugaboy and Get Good.** Dugaboy and Get Good are sham Dondero “trusts” with only the most attenuated standing. Dugaboy has filed three proofs of claim [Claim Nos. 113; 131; 177]. In two of these claims, Dugaboy argues that (1) the Debtor is liable to Dugaboy

⁷ Mr. Dondero filed two other proofs of claim that he has since withdrawn with prejudice. See Docket No. 1460.

⁸ Without knowing the nature of the “updates,” 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.

for its postpetition mismanagement of the Highland Multi Strategy Credit Fund, L.P., and (2) this Court should pierce the corporate veil and allow Dugaboy to sue the Debtor for a claim it ostensibly has against the Highland Select Equity Master Fund, L.P. – a Debtor-managed investment vehicle. The Debtor believes that each of the foregoing claims is frivolous and has objected to them. [Docket No. 906].

12. In its third claim, Dugaboy asserts a claim against the Debtor arising from its Class A limited partnership interest in the Debtor (which represents just 0.1866% of the total limited partnership interests in the Debtor). Similarly, Get Good filed three proofs of claim [Claim Nos. 120; 128; 129] arising from its prior ownership of limited partnership interests in the Debtor. Because each these claims arises from an equity interest, the Debtor will seek to subordinate them under 11 U.S.C. § 510 at the appropriate time. As set forth above, these interests are out of the money and are not expected to receive any economic recovery.

13. Consequently, Mr. Dondero, Dugaboy, and Get Good’s standing to object to the HarbourVest settlement is attenuated and their chances of recovery in this case are extremely speculative at best. *See In re Kutner*, 3 B.R. 422, 425 (Bankr. N.D. Tex. 1980) (finding that a party had standing only when it had a “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). Mr. Dondero, Dugaboy, and Get Good’s minimal interest in the estate should not allow them to overrule the estate’s business judgment or veto settlements with creditors, especially when no actual creditors and constituents have objected. “[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.” *In re Lionel*, 722 F.2d 1063, 1071 (2d Cir. 1983).

B. Mr. Dondero’s Objection and his “Trusts” Objection Are Without Merit

14. As discussed in the Motion, under applicable Fifth Circuit precedent, a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See, e.g., In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). In making this determination, courts look to the following factors:

- probability of success in the litigation, with due consideration for the uncertainty of law and fact;
- complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- all other factors bearing on the wisdom of the compromise, including (i) “the paramount interest of creditors with proper deference to their reasonable views” and (ii) whether the settlement is the product of arm’s length bargaining and not of fraud or collusion.

Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.), 119 F.3d 349, 356 (5th Cir. 1997) (citations omitted). *See also Age Ref. Inc.*, 801 F.3d at 540; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 918 (5th Cir. 1995).

15. **The Settlement Seeks to Revisit the Acis Orders.** In the Dondero Objection, Mr. Dondero argues that HarbourVest’s claim is based on the financial harm caused to HarbourVest from Acis’s bankruptcy and the orders entered in the Acis bankruptcy. Mr. Dondero extrapolates from this that HarbourVest is seeking to challenge this Court’s rulings in Acis. (Dondero Obj., ¶¶ 17-20) Mr. Dondero misinterprets HarbourVest’s claims and the dangers such claims pose to the Debtor’s estate.

16. HarbourVest’s claims are for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty

and unfair prejudice (under Guernsey law), violations of state securities laws, and RICO. HarbourVest is not arguing that Acis or this Court caused its damages; HarbourVest is arguing that *the Debtor* – led by Mr. Dondero – (a) misled HarbourVest as to the nature of Mr. Terry’s claims against the Debtor and the litigation with Acis, (b) knowingly and intentionally failed to disclose that the Debtor was engaged in the fraudulent transfer of assets to prevent Mr. Terry from collecting his judgment, and (c) that *the Debtor* – under the control of Mr. Dondero – improperly engaged in a crusade against Mr. Terry and Acis, which substantially damaged HarbourVest and its investment in HCLOF, in each case in order to induce HarbourVest to invest in HCLOF.

17. Again, HarbourVest does not contend that Acis caused its damages. Rather, HarbourVest contends that the fraudulent transfer of assets as part of the Debtor’s crusade against Mr. Terry and Acis and the false statements and omissions about those matters caused HarbourVest to make an investment it would never have made had Mr. Dondero and the Debtor been honest and transparent. The Acis litigation – in HarbourVest’s estimation – never should have happened. Acis did not cause HarbourVest’s damages. Mr. Dondero’s crusade against Mr. Terry and the Debtor’s allegedly fraudulent statements to HarbourVest about the fraudulent transfers, Mr. Terry and Acis caused HarbourVest’s damages.

18. **The HarbourVest Claim Lacks Merit.** In their objections, Mr. Dondero and the Trusts argue that the HarbourVest settlement is not fair and equitable and not in the best interests of the estate because (a) it does not address the Debtor’s arguments against the HarbourVest claims and (b) there is a lack of pending litigation seeking to narrow the claims against the estate. These arguments only summarily address the first two factors of *Cajun Electric*, which deal with success in the litigation, and, in doing so, mischaracterize the dangers to the Debtor’s estate

posed by HarbourVest's claims. (Dondero Obj., ¶¶ 21-25; Trusts Obj., ¶ 18(a))

19. Both the Dondero Objection and – to a much lesser extent - the “Trusts” Objection allege that (a) HarbourVest's losses were caused by Acis and its (mis)management of HCLOF's investments (Dondero Obj., ¶¶ 22, 24), (b) there is no contract that supports HarbourVest's claims (Dondero Obj. ¶ 23; Trusts Obj., ¶ 18(a)), (c) there is no causal connection between HarbourVest's losses and the Debtor's conduct (Dondero Obj., ¶ 24), and (d) the Debtor should litigate all or a portion of HarbourVest's claim before settling (Dondero Obj., ¶ 25). Again, though, as set forth above, both Mr. Dondero and the “Trusts” seek to shift the cause of HarbourVest's damages away from the Debtor's misrepresentations and to Mr. Terry's management of HCLOF's investments. This is simple misdirection.

20. HarbourVest's claims are that it invested in HCLOF based on the Debtor's fraudulent misrepresentations. Fraudulent misrepresentation sounds in tort, not contract. *See, e.g., Clark v. Constellation Brands, Inc.*, 348 Fed. Appx. 19, 21 (5th Cir. 2009) (referring to party's claim based on fraudulent misrepresentation as a tort); *Eastman Chem. Co. v. Niro, Inc.*, 80 F. Supp. 2d 712, 717 (S.D. Tex. 2000) (noting that party had common law duty not to commit intentional tort of fraudulent misrepresentation). There is thus no need for HarbourVest to point to a contractual provision to support its claim.⁹ Moreover, in order to defend against HarbourVest's claims, the Debtor would need to elicit evidence showing that its employees did not make misrepresentations to HarbourVest. Such a defense would require the Debtor to rely on the veracity of Mr. Ellington's testimony, among others. That is a high hurdle, and no reasonable person would expect the Debtor to stake the resolution of HarbourVest's \$300 million claim on the Debtor's ability to convince this Court that Mr. Ellington was telling HarbourVest

⁹ Subsequent to filing the Motion, the Objectors requested all agreements between HarbourVest, HCLOF, and the Debtor, and such agreements were provided.

the truth. This is especially true in light of the evidence supporting Mr. Ellington's recent termination for cause and the evidence recently provided by HarbourVest supporting its claim for fraudulent misrepresentations.

21. Finally, neither Mr. Dondero nor the "Trusts" even address the third factor analyzed by the Fifth Circuit: all other factors bearing on the wisdom of the compromise, including "the paramount interest of creditors with proper deference to their reasonable views." This is telling because no creditor or party in interest has objected to the settlement. Mr. Dondero and his proxies' preference for constant litigation should not outweigh the preference of the Debtor and its creditors for a reasonable and expeditious settlement of HarbourVest's claims.

22. **The HarbourVest Settlement Is a Windfall to HarbourVest.** Both the Dondero Objection and the "Trusts" Objection argue that the HarbourVest settlement represents a substantial windfall to HarbourVest. Both Mr. Dondero and the "Trusts" ignore the facts. Specifically, Mr. Dondero argues that HarbourVest is receiving \$60 million dollars in *actual* value for its claims. Mr. Dondero's contention, however, wrongly assumes that both the \$45 million general unsecured claim and the \$35 million subordinated claim provided to HarbourVest under the settlement will be paid 100% in full and that HarbourVest will receive \$80 million in cash. From that \$80 million, Mr. Dondero subtracts \$20 million, which represents the value Mr. Dondero ascribes to HarbourVest's interests in HCLOF that are being transferred to the Debtor. Mr. Dondero's math ignores the reality of this case.

23. The Debtor very clearly disclosed in the projections filed with the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, [Docket No. 1473] (the "Projections") that general unsecured claims would receive an 87.44% recovery *only if* the claims of UBS, HarbourVest, Integrated Financial Associates, Inc., Mr.

Daugherty, and the Hunter Mountain Investment Trust were zero. Because of the Debtor's success in settling litigation, that assumption is proving to be inaccurate. Regardless, even if general unsecured claims receive a recovery of 87.44%, because the subordinated claims are junior to the general unsecured claims, the subordinated claims' projected recovery is currently zero. As such, assuming the HCLOF's interests are worth \$22.5 million,¹⁰ the actual recovery to HarbourVest will be less than \$16.8 million. This is not a windfall. HarbourVest's investment in HCLOF was \$80 million and its claim against the estate was over \$300 million. The settlement represents a substantial discount.

24. **Improper Gerrymandering and/or Vote Buying.** Each of Mr. Dondero and the Trusts argue in one form or another that the HarbourVest settlement is improper as it provides HarbourVest a windfall on its claims in exchange for HarbourVest voting to approve the Plan. These unsubstantiated allegations of vote buying should be disregarded. As an initial matter, and as set forth above, HarbourVest is *not* getting a windfall. HarbourVest is accepting a substantial discount in the settlement. HarbourVest's incentive to support the Plan comes from HarbourVest's determination that the Plan is in its best interests. There is also nothing shocking about a settling creditor supporting a plan. Indeed, it would be nonsensical for a creditor to settle its claims and then object to the plan that would pay those claims.

25. More importantly, HarbourVest's votes in Class 9 (Subordinated Claims) are not needed to confirm the Plan. As will be set forth in the voting declaration, Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 8 (General Unsecured Claims) have voted in favor of the Plan.¹¹ In brief, the Plan was approved without HarbourVest's Class 9 vote,

¹⁰ It is currently anticipated that Mr. James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, will testify as to the value of the HCLOF interests to the Debtor's estate.

¹¹ The Debtor anticipates that Mr. Dondero and his related entities will argue that neither Class 7 nor Class 8 voted to accept the Plan because of the votes cast against the Plan in those Classes by current and former Debtor

and the Debtor, therefore, has no need to “buy” HarbourVest’s Class 9 claims. Accordingly, any claims of gerrymandering or vote buying are without merit.

C. CLOH Objection

26. CLO Holdco (and to a much lesser extent, the “Trusts”) object to HarbourVest’s transfer of its interests in HCLOF as part of the settlement. Currently, the settlement contemplates that HarbourVest will transfer 100% of its collective interests in HCLOF to HCMLP Investments, LLC (“HCMLPI”), a wholly-owned subsidiary of the Debtor. As set forth in the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.* (which was appended as Exhibit A to the Settlement Agreement) [Docket No. 1631-1], each of the Debtor, HarbourVest, Highland HCF Advisors, Ltd. (HCLOF’s investment manager) (“HHCFA”), and HCLOF agree that HarbourVest is entitled to transfer its interests to HCMLPI pursuant to that certain *Members Agreement Relating to the Company*, dated November 15, 2017 (the “Members Agreement”),¹² without offering that interest to other investors in HCLOF.

27. The *only* party to object to the transfer of HarbourVest’s interests in HCLOF to HCMLPI is CLO Holdco. CLO Holdco holds approximately a 49.02% interest in HCLOF and is the wholly-owned subsidiary of the DAF, Mr. Dondero’s donor-advised fund. CLO Holdco argues that the Member Agreement requires HarbourVest to offer its interest first to the other investors in HCLOF before it can transfer its interests to HCMLPI. In so arguing, CLO Holdco attempts to create ambiguity in an unambiguous contract and to use that ambiguity to disrupt the Debtor’s settlement with HarbourVest.

28. As an initial matter, the Debtor and CLO Holdco agree that the transfer of HarbourVest’s interests in HCLOF to HCMLPI is governed by Article 6 (Transfers or Disposals

employees, including Mr. Ellington and Mr. Isaac Leventon. The Debtor will demonstrate at confirmation that those objections are without merit and that Class 7 and Class 8 voted to accept the Plan.

¹² A true and accurate copy of the Members Agreement is attached hereto as Exhibit A.

of Shares) of the Members Agreement (an agreement governed by Guernsey law). (CLOH Obj., ¶ 3) The parties diverge, however, as to how to interpret Article 6. The Debtor, as set forth below, believes Article 6 is clear in that it allows HarbourVest to transfer its interests in HCLOF to any “Affiliate of an initial Member party” without requiring the right of first refusal in Section 6.2 of the Members Agreement. CLO Holdco’s position appears to be that the Members Agreement, despite its clear language, should be interpreted as limiting transfers to an “initial Member’s *own* affiliates” and that any other transfer requires the consent of HHCFA and satisfaction of the right of first refusal. (*Id.* (emphasis added)) CLO Holdco’s reading is contrary to the actual language of the Members Agreement.

29. First, Section 6.1 of the Members Agreement provides, in pertinent part:

[REDACTED]

(Members Agmt, § 6.1 (emphasis added)) Under the Members Agreement, “Affiliate” is defined, in pertinent part, as “[REDACTED]

[REDACTED]

(*Id.*, § 1.1) A “Member” in turn is a [REDACTED].” The “initial Member[s]” are the initial Members of HCLOF listed on the first page of the Members Agreement and include the Debtor, HarbourVest, and CLO Holdco.

30. As such, under the plain language of Section 6.1, HarbourVest is entitled – without the consent of any party – to “Transfer” its interests in HCLOF to an “Affiliate” of any of the Debtor, HarbourVest, or CLO Holdco. And that is exactly what is contemplated by the settlement. HarbourVest is transferring its interests to HCMLPI, a wholly owned and controlled subsidiary of the Debtor, and therefore an “Affiliate” of the Debtor. That transfer is indisputably

allowed under Section 6.1; it is a transfer to an “Affiliate of an initial Member.” CLO Holdco may, tongue in cheek, call this structure “convenient” but that sarcasm is an attempt to avoid the fact that the Members Agreement clearly allows HarbourVest to transfer its interest to HCMLPI without the consent of any party.¹³ The fact that CLO Holdco does not now like the language it previously agreed to when CLO Holdco and the Debtor were both controlled by Mr. Dondero is not a reason to re-write Section 6.1 of the Members Agreement.

31. Second, Section 6.2 of the Members Agreement is also unambiguous and, by its plain language, allows HarbourVest to “Transfer” its interests in HCLOF to “Affiliates of an initial Member” (*i.e.*, HCMLPI) without having to first offer those interests to the other Members (such obligation, the “ROFO”). CLO Holdco attempts to create ambiguity in Section 6.2 by arguing that it must be read in conjunction with Section 6.1 and that interpreting the plain language of Section 6.2 to allow HarbourVest to transfer its interests to HCMLPI without restriction makes certain other language surplus and meaningless. (CLOH Obj., ¶ 11-13) Again, CLO Holdco is attempting to create controversy and ambiguity where none exists.

32. Section 6.2 of the Members Agreement provides, in pertinent part:

██
██
██
██

(Members Agmt., § 6.2 (emphasis added)) Like Section 6.1, Section 6.2 is clear on its face. It exempts from the requirement to comply with the ROFO two categories of “Transfers”: (1) Transfers to “affiliates of an initial Member” from Members *other than* CLO Holdco and the

¹³ Although HHCFA’s consent is not necessary for HarbourVest to transfer its interests to HCMLPI, HHCFA will consent to the transfer.

“Highland Principals” (*i.e.*, the Debtor and certain of its employees)¹⁴ and (2) Transfers from CLO Holdco or a Highland Principal to the Debtor, the Debtor’s “Affiliates,” or another Highland Principal. The fact that a narrower exemption is provided to CLO Holdco and the Debtor than to HarbourVest (or any other Member) under Section 6.2 is of no moment; the language says what it says and was agreed to by all Members, including CLO Holdco, when they executed the Members Agreement.

33. In addition, and although not relevant, the language of Section 6.2 makes sense in the context of the deal. Although CLO Holdco and the Debtor may have disclaimed an “Affiliate” relationship, they are related through Mr. Dondero and invest side by side with the Debtor in multiple deals.¹⁵ The different standards in Section 6.2 serve to ensure that HarbourVest’s (or any successor to HarbourVest) right to Transfer its shares without satisfying the ROFO is limited to three parties: (i) HarbourVest’s Affiliates, (ii) the Debtor’s Affiliates, and (iii) CLO Holdco’s Affiliates. This restriction keeps the relative voting power of each Member static and ensures that CLO Holdco and the Debtor, together, will *always* have more than fifty percent of HCLOF’s total interests and that HarbourVest will *always* have less than fifty percent. This counterintuitively also explains the greater restrictions placed on CLO Holdco and the “Highland Principals.” The Highland Principals include certain Debtor employees. Those employees – as well as CLO Holdco and the Debtor – are prohibited from transferring their HCLOF interests outside of the Dondero family. This restriction makes sense. If, for example, a Debtor employee wanted to transfer its interests to an Affiliate of HarbourVest, HarbourVest could have more than fifty percent of the HCLOF interests because of the thinness

¹⁴ “Highland Principals” means: [REDACTED]
[REDACTED]
[REDACTED] (Members Agmt., § 1.1)

¹⁵ There can be no real dispute that Mr. Dondero effectively controls CLO Holdco.

of the Dondero-family's majority (approximately 0.2%). At the time the Members Agreement was executed, CLO Holdco and the Debtor were under common control. Section 6.2 preserves those related entities' control over HCLOF by restricting transactions that would transfer that control unless the ROFO is complied with.

34. As such, and notwithstanding CLO Holdco's protestations, Section 6.1 and Section 6.2 are consistent as written and clear on their face. This consistency is further evidenced by HCLOF's Articles of Incorporation¹⁶ and HCLOF's offering memorandum, which each include language identical to Section 6.1 and 6.2 of the Members Agreement.¹⁷ It seems highly unlikely, if not implausible, that sophisticated parties such as CLO Holdco would include the exact same language in six separate places over three documents without a reason for that language and without the intent that such language be interpreted as it is clearly written – not as CLO Holdco now wants it to be interpreted. Accordingly, since HarbourVest is transferring its interests to HCMLPI, an Affiliate of an initial Member, the plain language of Section 6.2

¹⁶ See Articles of Incorporation, adopted November 15, 2017, a true and correct copy of which is attached hereto as Exhibit B.

[REDACTED]

(Articles of Incorporation, § 18.1)

[REDACTED]

(*Id.*, § 18.2)

¹⁷ See Offering Memorandum, dated November 15, 2017, a true and correct copy of which is attached hereto as Exhibit C.

[REDACTED]

(Offering Memorandum, page 89)

exempts HarbourVest from having to comply with the ROFO.

35. Third, and finally, CLO Holdco makes the nonsensical argument that because Section 6.2 provides different treatment to similarly situated Members that this Court should re-write Section 6.2. (CLOH Obj., ¶¶ 15-17) Contracts provide different treatment to ostensibly similarly situated parties all the time and no one objects that that creates an absurd result. It just means that different parties bargained for and received different rights.

36. CLO Holdco's attempt to justify why this Court should re-write the Members Agreement to correct the "disparate treatment" is also unavailing. As an example of the absurd result caused by the "disparate treatment," CLO Holdco states: "[B]ecause the HarbourVest Members are technically Affiliates of an initial member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer." (*Id.*, ¶ 16) The scenario posited by CLO Holdco, however, is *exactly* the scenario prevented by the clear language of Section 6.2. For HarbourVest to obtain control of HCLOF, it would – as a matter of mathematical necessity – need the interests held by CLO Holdco (49.02%) and/or the Highland Principals (1% in the aggregate). Section 6.2, however, *expressly* prohibits CLO Holdco and the Highland Principals from transferring their interests to HarbourVest or its Affiliates without satisfying the ROFO. As set forth above, it is Section 6.2 that prevents control from being transferred away from the Dondero family without compliance with the ROFO. In fact, Section 6.2 would only break down if the limiting language in Section 6.2 were read out of it in the manner advocated by CLO Holdco.

37. Ultimately, Article 6 of the Members Agreement is clear as written and expressly allows HarbourVest to transfer its interests to HCMLPI. If CLO Holdco had an objection to the rights provided to HarbourVest under the Members Agreement, CLO Holdco

should have raised that objection three and a half years ago before agreeing to the Members Agreement. CLO Holdco should not be allowed to create ambiguity in an unambiguous contract or to re-write that agreement to impose additional restrictions on HarbourVest. *See Clardy Mfg. Co. v. Marine Midland Bus. Loans Inc.*, 88 F.3d 347, 352 (5th Cir. 1996) (enforcing the “unambiguous language in a contract as written,” noting that where a contract is unambiguous, a party may not create ambiguity or “give the contract a meaning different from that which its language imports”) (internal quotations omitted); *Texas v. Am. Tobacco Co.*, 463 F.3d 399, 407 (5th Cir. 2006) (“Courts interpreting unambiguous contracts are confined to the four corners of the document, and cannot look to extrinsic evidence to create an ambiguity.”).

38. It should go without saying, but CLO Holdco (and the other parties to the Members Agreement) should also be required to satisfy their obligations under the Members Agreement and execute the “Adherence Agreement” as required by Section 6.6 of the Members Agreement in connection with the Transfer of HarbourVest’s interests to HCMLPI or any other permitted Transfer.

39. Finally, and notably, although CLO Holdco spends considerable time arguing that HarbourVest should be required to comply with the ROFO, nowhere in the CLOH Objection does CLO Holdco state that it wishes to purchase HarbourVest’s interests in HCLOF. This omission is telling. CLO Holdco and the other Objectors have no interest in actually exercising their alleged right of first refusal contained in the Members Agreement. Rather, their only interest is in causing the Debtor to spend time and money responding to a legion of related (and coordinated) objections.¹⁸

¹⁸ *See Debtor’s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* [Adv. Pro. 20-3190-sgj, Docket No. 46], Exhibit Q; Exhibit T (email from Mr. Dondero as forwarded to Mr. Ellington stating “Holy bananas..... make sure we object [to the HarbourVest Settlement]”); Exhibit Y.

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WHEREFORE, for the reasons set forth above and in the Motion, the Debtor respectfully requests that the Court grant the Motion.

Dated: January 13, 2021

PACHULSKI STANG ZIEHL & JONES LLP

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APPENDIX 9

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

4 In Re:) **Case No. 19-34054-sgj-11**
5) Chapter 11
6)
7 HIGHLAND CAPITAL) Dallas, Texas
8 MANAGEMENT, L.P.,) Thursday, January 14, 2021
9) 9:30 a.m. Docket
10)
11) - MOTION TO PREPAY LOAN
12) [1590]
13) - MOTION TO COMPROMISE
14) CONTROVERSY [1625]
15) - MOTION TO ALLOW CLAIMS OF
16) HARBOURVEST [1207]
17)
18)
19)
20)
21)
22)
23)
24)
25)

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

12 WEBEX APPEARANCES:

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23
24
25 Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - JANUARY 14, 2021 - 9:41 A.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, the Honorable Stacey Jernigan presiding.

5 THE COURT: Good morning. Please be seated. All
6 right. We're a little late getting started because we had
7 lots of reading material for the Court today. All right.
8 This is Judge Jernigan, and we have a couple of Highland
9 settings. The HarbourVest matters are the primary thing we
10 have set today, and then we also have a Debtor's motion
11 pursuant to protocols for authority for Highland Multi-Strat
12 to prepay a loan.

13 All right. Well, let's get a few appearances. First, for
14 the Debtor team, who do we have appearing this morning?

15 MR. POMERANTZ: Good morning, Your Honor. It's Jeff
16 Pomerantz, John Morris, and Greg Demo here on behalf of the
17 Debtor.

18 THE COURT: Okay. Thank you.

19 All right. We have objections on HarbourVest. Who do we
20 have appearing for Mr. Dondero this morning?

21 MR. WILSON: Your Honor, it's John Wilson, and I'm
22 also joined by Michael Lynn, John Bonds, and Bryan Assink.

23 THE COURT: Okay. I'm sorry. Could -- the court
24 reporter does yeoman's work in this case. Let me just make
25 sure we got all three of those names. Say again, Mr. Wilson.

1 MR. WILSON: John Bonds and Michael Lynn and Bryan
2 Assink.

3 THE COURT: Oh, okay. So, see, I thought I heard
4 somebody Wilson in all of that, which was why I was pressing
5 the issue.

6 All right. Is Mr. Dondero present on the video for
7 today's hearing?

8 MR. WILSON: I believe he is, Your Honor.

9 THE COURT: Mr. Dondero, could you confirm that you
10 are out there? (No response.) Okay. My court reporter says
11 he sees the name out there. Is he in your office?

12 MR. WILSON: Your Honor, he is appearing remotely
13 from my office. I'm not sure exactly where he's appearing
14 from.

15 THE COURT: Okay. Well, Mr. Dondero, if you're out
16 there and you're speaking up to confirm you're present, we're
17 not hearing you. Maybe your device is on mute. So please
18 unmute yourself.

19 (No response.)

20 THE COURT: All right. I'm going to take some other
21 appearances and you -- you need to try to communicate with
22 your client and let him know I need to confirm he's present.
23 Okay?

24 All right. Meanwhile, let's go to our other Objectors.
25 CLO Holdco. Who do we have appearing today?

1 MR. KANE: John Kane; Kane Russell Coleman & Logan;
2 on behalf of CLO Holdco.

3 THE COURT: All right. Thank you, Mr. Kane.

4 We had an objection from Dugaboy Investment Trust and Get
5 Good Trust. Who do we have appearing?

6 MR. DRAPER: Douglas Draper, Your Honor, for -- for
7 Draper.

8 THE COURT: All right. Thank you, Mr. Draper.

9 All right. I think those were the only written objections
10 we had. Mr. Pomerantz, do you confirm, we don't have any
11 other objectors for the motions set, correct?

12 MR. POMERANTZ: Your Honor, there was those three.

13 THE COURT: I'm sorry. I didn't catch your full
14 sentence.

15 MR. POMERANTZ: That is correct, Your Honor. There
16 were three objections to the motion.

17 THE COURT: Okay. Mr. Clemente, you're there for the
18 Creditors' Committee?

19 MR. CLEMENTE: Yes. Good morning, Your Honor. Matt
20 Clemente on behalf of the Official Committee of Unsecured
21 Creditors.

22 THE COURT: All right. Good morning. Thank you.
23 All right. We have a lot of other folks on the video. I'm
24 not going to go ahead and take a roll call of other lawyers.

25 MS. WEISGERBER: Your Honor?

1 THE COURT: Yes?

2 MS. WEISGERBER: Excuse me, Your Honor. It's Erica
3 Weisgerber from Debevoise on behalf of HarbourVest.

4 THE COURT: Okay.

5 MS. WEISGERBER: And I'm joined by Natasha Labovitz
6 and Dan Stroik --

7 THE COURT: Okay.

8 MS. WEISGERBER: -- from Debevoise as well.

9 THE COURT: Thank you. I was neglectful in not
10 getting your appearance, because, of course, you're at the
11 front and center of this motion to compromise, and I did see
12 that you filed a reply brief yesterday afternoon. Okay.
13 Thank you.

14 All right. Do we have -- do we have Mr. Dondero on the
15 line? I'm going to check again.

16 (No response.)

17 THE COURT: Mr. Dondero's counsel, I cannot hear you,
18 so please unmute your device.

19 MR. WILSON: Your Honor, it appears to me that Mr.
20 Dondero's device was unmuted as soon as you asked if he was
21 available. I sent him a communication a second ago asking if
22 he's having technical difficulties. I have not received a
23 response, so I --

24 MR. DONDERO: Hello. Can anybody hear me?

25 THE COURT: Oh.

1 MR. WILSON: Okay. I hear him.

2 THE COURT: Mr. Dondero?

3 MR. DONDERO: Hello?

4 THE COURT: Is that you?

5 MR. DONDERO: Yeah, it is. I've been on. I've heard
6 everything since the beginning. It's just we've had technical
7 difficulties. I couldn't use the Highland offices. We've
8 been trying to set up something else.

9 THE COURT: All right.

10 MR. DONDERO: But I'm on now, if -- yes.

11 THE COURT: All right. Very good. Well, I'm glad
12 we've got you.

13 All right. Well, Mr. Pomerantz, how did you want to
14 proceed this morning?

15 MR. POMERANTZ: Your Honor, we could take up the
16 HarbourVest motion first, and I will turn it over to John
17 Morris. He and Greg Demo will be handling that. And then
18 after that we can handle the other motion, which is unopposed.

19 THE COURT: All right. Mr. Morris?

20 MR. KANE: Your Honor, this is -- sorry. This is
21 John Kane for CLO Holdco. Just very briefly, if I may. And
22 this will affect, I think, the Debtor's case in chief, so I'll
23 expedite things a little bit, I believe.

24 CLO Holdco has had an opportunity to review the reply
25 briefing, and after doing so has gone back and scrubbed the

1 HCLOF corporate documents. Based on our analysis of Guernsey
2 law and some of the arguments of counsel in those pleadings
3 and our review of the appropriate documents, I obtained
4 authority from my client, Grant Scott, as Trustee for CLO
5 Holdco, to withdraw the CLO Holdco objection based on the
6 interpretation of the member agreement.

7 THE COURT: All right. Well, thank you for that, Mr.
8 Kane. I think that -- that eliminates one of the major
9 arguments that we had anticipated this morning. So, thank you
10 for that.

11 Any other housekeeping matters that maybe someone had that
12 I didn't ask about?

13 MS. MATSUMURA: Yes, Your Honor. This is Rebecca
14 Matsumura from King & Spalding representing Highland CLO
15 Funding, Ltd. I just wanted to put on the record, we -- our
16 client had requested that some of its organizational documents
17 be filed under seal. But we have given permission for the
18 parties to present the relevant excerpts, to the extent it's
19 still relevant after Mr. Kane's announcement, in court. And
20 we'd just ask that the underlying documents remain sealed, but
21 we're not going to object if they show them on a PowerPoint or
22 anything like that.

23 So, to the extent that you had that on your radar, I just
24 wanted to clear that up for the proceedings.

25 THE COURT: All right. Well, I did sign an order

1 late last night. I don't know if it's popped up on the
2 docket.

3 MS. MATSUMURA: Yes, Your Honor. That's what this
4 referred to. That was what -- these are the documents that
5 were being sealed. And so I just wanted to note, if you --
6 you know, if the Debtor puts up an excerpt of those documents
7 and you're like, wait a minute, didn't I seal those, that we
8 were the party that requested them be under seal and we're
9 fine with them being shown in court, as long as the underlying
10 documents aren't publicly accessible.

11 THE COURT: Okay. Got you. Thank you.

12 All right. Any other housekeeping matters?

13 MR. MORRIS: Yes, Your Honor. This is John Morris
14 from Pachulski Stang for the Debtor. Good morning.

15 THE COURT: Good morning.

16 MR. MORRIS: The only other matter that I wanted to
17 raise, and I can do it now or I can do it later, or Your Honor
18 may tell me that it's not appropriate to do at this time, is
19 to schedule the Debtor's motion to hold Mr. Dondero in
20 contempt for violation of the TRO.

21 THE COURT: All right. Well, let's do that at the
22 conclusion today. And please make sure I do it. I think I
23 was going to address this last Friday, and we went very late
24 and it slipped off my radar screen. But I did see from my
25 courtroom deputy that you all were reaching out to her

1 yesterday to get this set, and then Mr. Dondero's counsel
2 reached out to her and said, We're going to file an objection
3 to a setting next Wednesday, or I think you had asked for a
4 setting next Tuesday or Wednesday.

5 MR. MORRIS: I did.

6 THE COURT: And I don't -- I don't know if that
7 response/objection was ever filed last night. I haven't seen
8 it if it was. So, we'll -- please, make sure I don't forget.
9 We'll take that up at the end of today's matters. All right.
10 Well, --

11 MR. MORRIS: All right. So, --

12 MS. WEISGERBER: Your Honor, one last housekeeping
13 item from -- I'm joined this morning by Michael Pugatch of
14 HarbourVest, who will present some testimony this morning. I
15 just want to confirm he's on the line and confirm no
16 objections to him sitting in for the rest of the hearing.

17 THE COURT: All right. Mr. Pugatch, this is Judge
18 Jernigan. Could you respond? Are you there with us?

19 MR. PUGATCH: Yes. Good morning, Your Honor. Mike
20 Pugatch from HarbourVest here.

21 THE COURT: All right. Very good. I think we had
22 you testify once before in the Acis matter, if I'm not
23 mistaken. Maybe. Maybe not. Maybe I saw a video deposition.
24 I can't remember.

25 All right. So, we're going to let Mr. Pugatch sit in on

1 this. Anyone want to say anything about that? I consider him
2 a party representative, so I don't -- I don't think anyone
3 could invoke the Rule.

4 All right. Very good. Well, let's go forward if there
5 are no more housekeeping matters.

6 MR. MORRIS: Okay.

7 THE COURT: Mr. Morris?

8 MR. MORRIS: Thank you. Thank you very much, Your
9 Honor. John Morris; Pachulski Stang Ziehl & Jones; for the
10 Debtor.

11 It's a rather straightforward motion today. It's a motion
12 under Rule 9019, pursuant to which the Debtor requests the
13 Court's authority and approval to enter into a settlement
14 agreement with HarbourVest that will resolve a number of
15 claims that HarbourVest has filed against the Debtor.

16 What I -- the way I propose to proceed this morning, Your
17 Honor, is to give what I hope is an informative but relatively
18 brief opening statement. I'll defer to HarbourVest and its
19 counsel as to whether they want to make a presentation in
20 advance of the offer of evidence. Any objecting party, I
21 suppose, should then be given the opportunity to present their
22 case to the Court. Then the Debtor will call Jim Seery, the
23 Debtor's CEO and CRO. We will offer documents into evidence.
24 I would propose then that the objecting parties take the
25 opportunity to ask Mr. Seery any questions they'd like on the

1 matter.

2 After the Debtor rests, I think HarbourVest would like to
3 put Mr. Pugatch on the stand to offer some testimony on their
4 behalf. And I think that that will conclude the case. We can
5 finish up with some closing arguments as to what we believe
6 the evidence showed, but that's the way that I'd like to
7 proceed, if that's okay with the Court.

8 THE COURT: All right. That sounds fine.

9 OPENING STATEMENT ON BEHALF OF THE DEBTOR

10 MR. MORRIS: Okay. So, as I said, Your Honor, this
11 is a -- this should be a very straightforward motion under
12 Rule 9019. The standard is well-known to the Court. There
13 are four elements to a 9019 motion. The Debtor clearly has
14 the burden of proof on each one. And we easily meet that
15 burden, Your Honor.

16 The standard, just to be clear, the first part is that we
17 have to establish a probability of success, with due
18 consideration for uncertainty of law and fact. The second one
19 is the complexity, likely duration, expense and inconvenience
20 of the litigation. The third part of the test is the
21 paramount interest of creditors. And the fourth part of the
22 test is whether or not the proposed settlement was reached
23 after arm's-length negotiations.

24 The Debtor believes that it easily meets this standard,
25 and frankly, is a little bit frustrated that it's being forced

1 to incur the expense by Mr. Dondero in going through this
2 process.

3 A plain reading, a fair reading of the economics here
4 relative to the claim shows that this is a very reasonable
5 settlement. I don't need to go beyond that, Your Honor. I
6 don't even need to use the word reasonable. It surely meets
7 the lowest standard.

8 We've prepared a couple of demonstrative exhibits, Your
9 Honor. I'm going to use them with Mr. Seery. But I'd like to
10 just put one up on the screen now, if I may.

11 Ms. Canty, can you please put up Demonstrative Exhibit #3?

12 Demonstrative Exhibit #3 is an outline of the economics of
13 the settlement. It includes the various pieces, the
14 components that the parties have agreed to. And it shows, at
15 least from the Debtor's perspective, just what HarbourVest is
16 being given here.

17 Up on the screen is a demonstrative exhibit. It has
18 citations to the evidence that will be admitted by the Court.
19 The first line shows that HarbourVest will receive a \$45
20 million allowed general unsecured nonpriority claim. And that
21 -- that can be found at Debtor's Exhibit EE, Exhibit 1, at
22 Page 2.

23 That claim is discounted by the expected recovery that
24 general unsecured creditors are supposed to get. As of
25 November, in the liquidation analysis that was part of the

1 disclosure statement -- that's the citation in the footnote --
2 the Debtor believed that unsecured creditors were estimated to
3 recover approximately eighty-seven and a half cents on the
4 dollar. And so we just did the arithmetic there to get to the
5 net economic value of the proposed general unsecured claim.

6 And from that, we reduced \$22-1/2 million because that is
7 the net asset value of HarbourVest's interest in HCLOF, which,
8 pursuant to the settlement agreement, it will transfer back to
9 the Debtor, so that the net economic value is approximately
10 \$16.8 million.

11 You will hear testimony from Mr. Seery that this number
12 is, in fact, overstated, and it's overstated because, since
13 the time the disclosure statement was filed in November, a
14 number of events have occurred that will -- that have caused
15 the estimated recovery percentage to be reduced from
16 approximately 87-1/2 percent to something lower than that. We
17 don't have the exact number, Your Honor, but Mr. Seery will --
18 and the evidence will show that there's been more expenses,
19 that there's been some resolution of certain claims. There's
20 been some positive issues, too. But that number is probably
21 in the 70s somewhere.

22 And in any event, I think the point here is, Your Honor,
23 HarbourVest invested \$80 million in HCLOF, which was going to
24 participate in the investment in CLOs. They filed a claim for
25 \$300 million, through treble damages and other claims. But

1 the net economic impact of this is going to be somewhere
2 probably in between \$12 and \$14 million. I'll let Mr. Seery
3 give more precision to that. And it represents less than -- a
4 less than five percent recovery on the total claim.

5 And we think it's important for the Court to keep that in
6 mind. What are the economics here? Are we overpaying? Is
7 this an unreasonable settlement? And I think the evidence
8 will show that the Debtor is not, but that this settlement
9 that you see before you was the product of arm's length, and
10 I'm going to go in reverse order of the four-part test under
11 9019.

12 So, the last part is whether or not the settlement, the
13 proposed settlement was the product of arm's-length
14 negotiation. You'll hear lots of evidence that this
15 settlement that's up on the screen right now very much was the
16 product of arm's-length negotiation.

17 The third part of the test, Your Honor, is whether it
18 meets the paramount interest of creditors. You know,
19 regrettably, Mr. Dondero is the only purported creditor who is
20 objecting here. He may have done so through different
21 vehicles, but every objecting party here is a debtor [sic]
22 owned and controlled by Mr. Dondero. No other creditor -- not
23 the Creditors' Committee, UBS, Acis, Mr. Terry, Mr. Daugherty
24 -- nobody is objecting to this settlement except for Mr.
25 Dondero. And we believe that that highlights the Debtor's

1 ability to meet the third prong of the test, and that is these
2 are -- this settlement is in the paramount interest of
3 creditors.

4 Again, going in reverse, the second part of the test is
5 the complexity, duration, and expense of litigation. There
6 will be no disputed evidence that we meet -- the Debtor easily
7 meets this prong of the test. The evidence is going to show
8 that HarbourVest's claim is based on fraud, fraud in the
9 inducement, fraudulent statements and omissions, the kind of
10 case, Your Honor, that I'm sure you're familiar with that is
11 incredibly fact-intensive, that will be incredibly difficult
12 to navigate through. It will be prolonged, it will be
13 expensive, because you're necessarily relying on he said/she
14 said, basically. And so we're going to have to get testimony
15 from every person that spoke in connection with the events
16 leading up to the transaction. So we think the second prong
17 will be easily met, Your Honor.

18 And then the last prong -- the first prong, if you will --
19 is the likelihood of success on the merits. We think that the
20 settlement, the economic recovery that's up on the screen
21 here, which ultimately will be less than five percent of the
22 claimed amount, in and of itself shows that the settlement is
23 consistent with the Debtor's perception of its likely success
24 on the merits. I'm certain that HarbourVest disagrees, but
25 that's okay, we're here today and that's the Debtor's view,

1 and the Court is here to assess the Debtor's business judgment
2 and whether the Debtor has properly analyzed the issues and
3 gone through the process. And the evidence will show
4 conclusively that it will. That it has.

5 Mr. Seery will testify at some length as to the risks that
6 he saw. I think that you'll hear counsel for Mr. Dondero ask
7 both Mr. Seery and Mr. Pugatch a number of questions designed
8 to elicit testimony about this defense or that defense. And
9 it's a little -- it's a little ironic, Your Honor, because,
10 really, every defense that they're going to try to suggest to
11 the Court was a valid defense is a defense that the Debtor
12 considered. In fact, it's, you know, it's a little spooky,
13 how they've -- how they've been able to identify kind of the
14 arguments that the Debtor had already considered in the
15 prosecution of their objections here.

16 But be that as it may, the evidence will conclusively show
17 that the Debtor acted consistent with its fiduciary duties,
18 acted in the best interests of the Debtor's estate, acted
19 completely appropriately here in getting yet another very
20 solid achievement for the Debtor, leaving very few claims that
21 are disputed at this point, all but one of which I believe are
22 in the hands of Mr. Dondero.

23 So, that's what we think that the evidence will show.

24 I do want to express my appreciation to Mr. Kane for
25 reflecting on the arguments that we made with respect to the

1 ability of the Debtor to engage in the transfer or the
2 acquisition of the asset from HarbourVest. I would -- I would
3 respectfully request that we just enter into a short
4 stipulation on the record reflecting that the Debtor's
5 acquisition of HarbourVest's interests in HCLOF is compliant
6 with all of the applicable agreements between the parties.

7 And with that, Your Honor, I look forward to putting Mr.
8 Seery on the stand and presenting the Debtor's case.

9 THE COURT: All right. Other opening statements?

10 OPENING STATEMENT ON BEHALF OF CLO HOLDCO, LTD.

11 MR. KANE: Yes, Your Honor. Sorry. John Kane on
12 behalf of CLO Holdco.

13 In response to Mr. Morris, I'm not going to enter into a
14 stipulation on behalf of my client, but the Debtor is
15 compliant with all aspects of the contract. We withdrew our
16 objection, and we believe that's sufficient.

17 THE COURT: All right. Well, I'm content with that.
18 Other opening statements?

19 OPENING STATEMENT ON BEHALF OF HARBOURVEST

20 MS. WEISGERBER: Your Honor, Erica Weisgerber on
21 behalf of HarbourVest.

22 HarbourVest joins in Mr. Morris's comments in support of
23 the settlement, and we believe that the question of whether
24 the settlement between HarbourVest and the Debtor satisfies
25 the Rule 9019 standard is not even a close one.

1 Some Objectors have made arguments about the merits of
2 HarbourVest's claims, which is why we're here. As Your Honor
3 will hear this morning, HarbourVest has meaningful and
4 meritorious claims against Highland, but made the business
5 decision to avoid the time, expense, and inherent risk of
6 litigation in the interest of preserving value, both for
7 itself and for the estate.

8 Today, Michael Pugatch, a managing director of
9 HarbourVest, will testify before the Court. He'll explain
10 that HarbourVest claims against Highland arise out of certain
11 misrepresentations and omissions by Highland to HarbourVest in
12 connection with HarbourVest's purchase of an interest in
13 HCLOF, one of Highland's managed funds. Those
14 misrepresentations and omissions, as Your Honor will hear,
15 relate to Highland's litigation with its former employee,
16 Joshua Terry, and transfers that were conducted in 2017 to
17 strip Acis of value and prevent Mr. Terry from collecting on
18 an \$8 million judgment.

19 Mr. Pugatch will further explain that HarbourVest would
20 not have invested in HCLOF had it known the underlying facts
21 about those Acis transfers.

22 Mr. Pugatch will also testify that not only did
23 HarbourVest not know about those transfers, it learned about
24 those transfers when it was accused of orchestrating the
25 transfers itself in the Acis bankruptcy. Your Honor will hear

1 that the Acis trustee sought extensive discovery from
2 HarbourVest after numerous accusations that HarbourVest was
3 behind the transfers.

4 Mr. Pugatch will also testify that Highland charged legal
5 fees for itself and its affiliates to HCLOF, essentially
6 forcing HCLOF to fund the litigation involving the Acis
7 bankruptcy and Mr. Terry.

8 In total, HarbourVest's claims for damages are over a
9 hundred million dollars in investment-related losses, lost
10 profits, legal fees inappropriately charged to HCLOF, its own
11 legal fees. And that's before interest or trebling damages.

12 But HarbourVest stands ready to litigate its claims, but
13 following hard-fought and extensive negotiations with the
14 Debtors, the parties reached the settlement that's now before
15 the Court. Mr. Pugatch's testimony regarding the strong
16 factual bases for HarbourVest's claims against Highland and
17 its recoverable damages will further underscore the risks that
18 the Debtors faced if they chose to litigate these claims, and
19 why this settlement is fair, equitable, and in the best
20 interest of the estate.

21 THE COURT: All right. Thank you, Counsel.

22 Other opening statements?

23 OPENING STATEMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

24 MR. DRAPER: Your Honor, this is Douglas Draper on
25 behalf of one of the Objectors. I'd like to just make a few

1 comments with respect to what I've heard and what the Court is
2 going to hear.

3 The first issue I'd like to address is the comment by
4 counsel for the Debtor that no other party has objected. The
5 9019 motion is one of the issues that this Court has to rule
6 on, whether or not there was an objection or not. So the fact
7 that this may be -- bankruptcy is not a popularity contest and
8 not an issue of who votes for what and doesn't vote. This,
9 along with the 1129(a) tests, are clearly within your
10 province, and you need to listen carefully because you'll have
11 to make your own independent analysis whether my objection is
12 correct or incorrect.

13 Two other points I'd like to make that I think are very
14 salient. Number one is, if you look at the Debtor's
15 disclosure statement, it basically took the position that the
16 HarbourVest claim is of little or no value. And lo and
17 behold, thirty days later, there's a settlement that brings
18 about a significant recovery to HarbourVest. The timing is
19 interesting, and I think the Court needs to pay careful
20 attention to what transpired between the two dates.

21 And then the last point I'd like to make is, as you listen
22 to the evidence, and what I learned abundantly clear from
23 hearing the depositions, is that the claim of HarbourVest, if
24 there is a claim at all, is probably one hundred percent --
25 should be subordinated in that it appears to arise out of the

1 purchase or sale of a security. And, again, I would ask the
2 Court to listen carefully to this because that's what it
3 appears to be and that's what the evidence is going to show to
4 the Court.

5 THE COURT: All right. Mr. Draper, let me clarify
6 something I'm not sure if I heard you say or not. Were you
7 saying that the Court still needs to drill down on the issue
8 of whether the Debtor can acquire HarbourVest's interest in
9 HCLOF?

10 MR. DRAPER: No.

11 THE COURT: Okay. I was confused whether you were
12 saying I needed to take an independent look at that, now that
13 the objection has been withdrawn of Holdco. You are not
14 pressing that issue?

15 MR. DRAPER: No, I am not. Basically, I think it's
16 the fairness of the settlement. I think the transferability
17 of the interest is separate and apart from the fairness of the
18 settlement itself. I think the fairness -- the
19 transferability was a contractual issue between two parties
20 that the Court does not have to drill down on.

21 THE COURT: All right. I have another question for
22 you. I want to clarify your client's standing. Tell me --
23 I'm looking through a chart I printed out a while back. I
24 guess Dugaboy Investment Trust filed a couple of proofs of
25 claim; is that right?

1 MR. DRAPER: Yes.

2 THE COURT: Okay. What --

3 MR. DRAPER: And objections are pending.

4 THE COURT: Pardon?

5 MR. DRAPER: Objections to those claims are pending
6 before the Court, Your Honor, --

7 THE COURT: Okay.

8 MR. DRAPER: -- and have not been litigated.

9 THE COURT: And what about Get Good Trust?

10 MR. DRAPER: Get Good Trust has a proof of claim also
11 that objections are pending to. Pending.

12 THE COURT: Okay. I don't want to get too
13 sidetracked here, but I know standing was -- was mentioned as
14 a legal argument today. What is the basis for those proofs of
15 claim?

16 MR. DRAPER: The first one is, with respect to the
17 proof of claim for Dugaboy, there is an investment that
18 Dugaboy made that was then funneled, we believe, up to the
19 Debtor. And the -- the loan that exists, we believe is a
20 Debtor loan, as opposed to a loan to the entity that we made
21 the loans to.

22 And, again, it's a matter that the Court is going to hear.
23 The claim may or may not be allowed. It has not been
24 disallowed yet.

25 The second part to the Dugaboy ownership is we own an

1 interest in the Debtor. And so we are, in fact, a party in
2 interest.

3 THE COURT: Okay.

4 MR. DRAPER: It may be a small interest, but it is an
5 interest.

6 THE COURT: It has a limited partnership interest in
7 the Debtor?

8 MR. DRAPER: Yes.

9 THE COURT: Is that correct?

10 MR. DRAPER: Yes.

11 THE COURT: Okay. Well, I'll move forward. Thank
12 you.

13 Does that cover -- any other opening statements? I think
14 that covered everyone who was -- who filed some sort of
15 pleading today. No.

16 MR. WILSON: Your Honor, John Wilson on behalf of --

17 THE COURT: I'm sorry. I'm sorry.

18 MR. WILSON: -- Mr. Dondero.

19 THE COURT: I missed Mr. Dondero's counsel. I knew
20 we had visited at some point this morning. I just got
21 confused there. Go ahead, Mr. Wilson.

22 MR. WILSON: No problem, Your Honor. I was just
23 going to say that we will reserve our comments until after the
24 conclusion of the testimony.

25 THE COURT: All right. Very well.

1 Mr. Morris, you may call your first witness.

2 MR. MORRIS: Thank you, Your Honor. Before I do,
3 just two very, very quick points.

4 THE COURT: Okay.

5 MR. MORRIS: To be clear, Dugaboy's interest in the
6 Debtor is 0.1866 percent. Less than two-tenths of one
7 percent.

8 Secondly, the argument that Mr. Draper just made with
9 respect to subordination is one that appears in nobody's
10 papers. And, in fact, not only doesn't it appear in anybody's
11 papers, but Mr. Dondero, I believe, specifically took issue
12 with the fact that a portion of the consideration that
13 HarbourVest would receive would be on a subordinated basis,
14 and he would -- and I think he took the position there is no
15 basis to give them a subordinated claim.

16 So, I just wanted to point those items out to the Court,
17 not that I think either one makes a large difference today,
18 but I do want to deal with the facts.

19 THE COURT: Thank you.

20 MR. MORRIS: The Debtor would call -- you're welcome,
21 Your Honor. The Debtor calls Mr. James Seery.

22 THE COURT: All right. Mr. Seery, welcome back to
23 virtual court. If you could say, "Testing, one, two" so I can
24 see you and swear you in.

25 MR. SEERY: Testing, one, two.

1 THE COURT: All right. I heard you but I'm not yet
2 seeing your video. Is your video turned on?

3 MR. SEERY: Video is on. Yes, Your Honor.

4 THE COURT: Okay. I see you now. Please raise your
5 right hand.

6 JAMES SEERY, DEBTOR'S WITNESS, SWORN

7 THE COURT: Thank you. Mr. Morris?

8 MR. MORRIS: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. MORRIS:

11 Q Good morning, Mr. Seery. Can you hear me?

12 A I can. Thank you, Mr. Morris.

13 Q Okay. Let's just cut to the chase here. Are you familiar
14 with HarbourVest's claims filed against the Debtor?

15 A I am, yes.

16 Q And did you personally review them?

17 A I did, yes.

18 Q Do you recall that over the summer the Debtor objected to
19 HarbourVest's claim?

20 A Yes, we did.

21 Q Why -- can you explain to the judge why Harbour -- why the
22 Debtor objected to HarbourVest's claim last summer?

23 A Sure. The HarbourVest claims, I believe there are about
24 six of them, initially were filed, and they were -- they were
25 relatively vague in terms of what the specifics of the claims

1 were.

2 So, we saw the claims but didn't, frankly, pay a lot of
3 attention to the underlying transaction that was referred to
4 in the proofs of claim and the losses that HarbourVest had
5 claimed to suffer -- to suffer with respect to their purchase
6 of securities related to HCLOF and the damages caused by the
7 Acis case. So we filed a pretty pro forma objection. I
8 believe it was a simply stated objection that we didn't have
9 any record that there was anything in the Debtor's books and
10 records that they had a valid claim for any amount against the
11 Debtor.

12 Q Are you aware that HarbourVest subsequently filed a
13 response to the Debtor's objection to their claims?

14 A Yes. Yes, I am aware.

15 Q And did you familiarize yourself with that particular
16 response?

17 A I did indeed. It was a pretty extensive response, really
18 developing the full panoply of their claims, which included
19 claims for expenses relating to the Acis case, which
20 HarbourVest viewed as being improperly charged to HCLOF by its
21 manager, which is effectively Highland. Those expenses,
22 HarbourVest took the view, were excessive, had nothing to do
23 with the investment, and were simply a pursuit of a personal
24 vendetta against Mr. Terry and his interests by Mr. Dondero,
25 and using HCLOF's money to actually pursue those interests.

1 In addition, and this was the first time we saw that,
2 HarbourVest brought forth its claims that it was entitled to
3 effectively rescind the transaction. And I say rescind the
4 transaction: In security parlance, they claim that they were
5 induced by fraud, I think as most are -- to enter into the
6 transaction.

7 As most are aware, the liability limitations in the OMs
8 and the exculpation in the documents are pretty broad, and
9 HarbourVest's position was that they weren't going to be
10 subject to those limitations because the actual transaction
11 that they entered into was a fraud on them, designed by Mr.
12 Dondero, Mr. Ellington, and the Highland team.

13 Q All right. Let's talk about your understanding, the
14 Debtor's understanding of the factual background to
15 HarbourVest's claim. What is your understanding of the
16 investment that HarbourVest made?

17 A Well, HarbourVest made an investment in the Highland CLO
18 business. The Highland CLO business was -- was Acis. And
19 effectively, the business had been separated, but in name
20 only. Acis was just a shell, with a few partners --
21 obviously, Mr. Terry as well -- but it was all Highland
22 personnel doing all the work.

23 And what they were trying to do with Acis was, in essence,
24 resuscitate a business that had been in a bit of a decline
25 from its pre-crisis heyday.

1 They were looking to take additional outside capital.
2 They would -- they would pay down or take money out of the
3 transaction, Highland would, or ultimately Mr. Dondero, and
4 they would -- they would seek to invest in Acis CLOs,
5 Highland's 1.0 CLOs. And then with respect to the Acis CLOs,
6 and potentially new CLOs, but with the Acis CLOs, they'd seek
7 to reset those and capture what they thought would be an
8 opportunity in the market to -- to really use the assets that
9 were there, not have to gather assets in the warehouse but be
10 able to use those assets to reset them to market prices for
11 the liabilities and then make money on the equity.

12 Q Do you have an understanding --

13 A Then --

14 Q I'm sorry. Go ahead.

15 A Why don't I continue? So, the transaction, they found
16 HarbourVest as a potential investor, and the basis of the
17 transaction was that they would make an investment into Acis.

18 Shortly before the transaction, and while they were doing
19 diligence, Mr. Terry received his arbitration award. I
20 believe that was in October of 2017. The transaction with
21 HarbourVest closed in mid- to late November of 2017. But Mr.
22 Terry was not an integral part. Indeed, he wasn't going to be
23 a key man. He had been long gone from Highland by that time.

24 What the -- I think you asked me originally what the basis
25 of their claim was. The transaction went forward, and the

1 basis of their claim is that they really were never -- nothing
2 was disclosed to them about the nature of the dispute with Mr.
3 Terry other than in the highest-level terms; the animosity
4 with respect to which that dispute was held by Highland and
5 potentially Mr. Terry; and really, how those costs would be
6 borne and risks be borne by the investment that they were
7 making.

8 That was, in essence, the transaction and the high-level
9 view of their claim.

10 Q Okay. Just a few very specific facts. Do you have an
11 understanding as to how much HarbourVest invested and what
12 they got in exchange for that investment?

13 A Yeah. HarbourVest invested in a couple tranches, and I
14 forget the exact dates, but approximately \$75 million
15 originally, and then they added another five. Some
16 distributions were made in the first half of 2018, putting
17 their net investment in the mid-seventies on the investment,
18 which now is worth about 22-1/2 million bucks.

19 Q And what percentage interest in HCLOF did HarbourVest
20 acquire, to the best of your knowledge?

21 A They have 49.98 percent of HCLOF. HCLOF, just to refresh
22 -- the Court is, I think, well aware of this, but to refresh,
23 is a Guernsey entity. Not -- not atypical for structures of
24 this type to use offshore jurisdictions and sell the
25 securities under -- at least to U.S. -- can't sell them to

1 U.S. investors unless they qualify, and these are sold under
2 Reg S to -- to investors that otherwise qualify. And
3 HarbourVest was investing in that transaction through the
4 Guernsey structure.

5 Q And do you have an understanding as to who owned the 50-
6 plus percent of HCLOF that HarbourVest was not going to
7 acquire?

8 A Yeah. There's -- you can tell by the name. HCLOF is
9 Highland CLO Funding. This is a Highland vehicle. So
10 Highland owned and controlled the vehicle. The DAF, which is
11 -- which is Dondero-controlled trusts, have the -- 49 percent.
12 Highland has, I believe, around .63-65 percent directly. And
13 then Highland employees at the time who were involved in the
14 business owned another small percentage.

15 So the majority was going to be controlled by Highland
16 through its control of DAF and its control of the employees
17 that worked for it. HarbourVest would be a minority investor.

18 Q Okay. And I believe you testified that the investment was
19 made in mid-November; is that right?

20 A That's correct. I think it was the 15th, may have been
21 the 17th of November.

22 Q And do you recall when in October the Terry arbitration
23 award was rendered?

24 A It was about a month before. I think it was right around
25 the 20th, the 17th to the 20th. I may be slightly wrong on

1 each of those dates.

2 Q Okay. What is your understanding as to what happened
3 after the issuance of the award that is the basis or at least
4 one of the bases for HarbourVest's claim?

5 A I don't think there's -- I don't think there's any
6 dispute. And there certainly are judicial findings. Dondero
7 and Highland went about stripping Acis of all of its assets.
8 So, remember that Acis is not a separate standalone company,
9 in any event. It's controlled and dominated completely by
10 Highland at the time. But it did have contracts. And those
11 contracts had value.

12 So the first idea was to strip out the management contract
13 and put it into a separate vehicle, which we called HCF
14 Advisor, which Highland still owns. The second piece was to
15 strip out some valuable assets, the risk retention piece,
16 which was a loan that in essence was equity that Highland had
17 put into Acis but structured as a loan, as many of the
18 transactions we'll see down the road are, in order to deal
19 with some -- avoid taxes in any way possible. And that
20 structure, that value moved value out of Acis for the express
21 purpose of trying to run, in essence, the Highland business
22 back in Highland.

23 Remember, as I said, Acis is just a Highland business
24 moved to a separate shell. When Mr. Terry got his arbitration
25 award against Acis and was seeking to enforce it, it was

1 pretty straightforward, let's take all the assets -- Dondero
2 scheme -- let's take all the assets and move them back into
3 Highland so Terry can't get anything.

4 Q And how does that scheme relate to the HarbourVest claim,
5 to the best of your knowledge?

6 A Well, HarbourVest -- HarbourVest's position is that they
7 invested in Acis and -- and whether Acis was called Acis or
8 called Highland, it doesn't really matter; there were valuable
9 assets in the -- in the entity that they were going to be
10 investing in through the equity in these CLOs and some of the
11 debt securities in those CLOs.

12 And then the stripping out and the fraudulent conveyances
13 out of Acis caused them damages because that's what left the
14 damage to Mr. Terry.

15 The quick math on Acis, by the way, is Acis has probably
16 lost, total damages, 175 million bucks. And that's pretty
17 easy. DAF lost 50. HarbourVest lost 50. Fifteen million of
18 fees charged to HCLOF. Another five million of fees, at
19 least, incurred by Mr. Terry. Ten million that went to Mr.
20 Terry, 15 to Highland fees, another five, plus Mr. Terry's
21 settlement in this case, over eight million bucks.

22 So HarbourVest's position, which, on a factual basis, you
23 know, is problematic for the estate, is, wait a second, we
24 invested in this vehicle with Highland. That was supposed to
25 invest in Highland CLOs. They were called Acis, but they were

1 Highland CLOs. And then you went about causing tremendous
2 damage to that vehicle that we ultimately were investing in,
3 and then charge us for the pleasure.

4 Q You used the phrase earlier "OM," I believe.

5 A Offering memorandum.

6 Q Offering memorandum? Can you just explain to the Court
7 your understanding of what an offering memorandum is?

8 A Typically, under U.S. law, and foreign jurisdictions have
9 similar laws, you have to have a document that explains the
10 securities that you're selling. And it goes into extreme
11 detail about the securities and the risks related to those
12 securities.

13 And the idea is not to have a document that tells you
14 whether it's a good investment or a bad investment, but it's a
15 document that discloses to the potential investor all of the
16 risks with respect to that security or related to the
17 investment over the duration of the security. It doesn't
18 predict the future, but it's supposed to make sure that it
19 gives you a very clean view of the past and a very clean view
20 of what the facts from the past are and how they would
21 implicate the future of the investment.

22 Q And in the course of its diligence, did the Debtor have an
23 opportunity to review the offering memorandum in the context
24 of the claims that were being asserted by HarbourVest?

25 A Oh, absolutely. It was originally effectively -- it's an

1 HCLOF offering memorandum. But as I said, HCLOF was managed
2 and controlled by Highland, and Highland originally prepared
3 it. And then, of course, in connection with -- with this
4 dispute and these claims, we reviewed it, both myself and my
5 legal team.

6 Q All right.

7 MR. MORRIS: Your Honor, the offering memorandum is
8 on the Debtor's exhibit list, and I think this is an
9 appropriate time to move into evidence Debtor's Exhibits A
10 through EE, all of which appear at Docket No. 1732.

11 THE COURT: 1732?

12 MR. MORRIS: It's the Debtor's Second Amended Witness
13 and Exhibit List.

14 THE COURT: All right. Any objection to admission of
15 A through EE?

16 MR. DRAPER: Douglas Draper. No objection, Your
17 Honor.

18 THE COURT: All right. Mr. --

19 MR. MORRIS: May I proceed?

20 THE COURT: Yeah. Mr. Wilson, did you want to
21 confirm no objection?

22 (Echoing.)

23 THE COURT: All right. Hearing no objection,
24 Debtor's A through EE are admitted.

25 (Debtor's Exhibits A through EE are received into

1 evidence.)

2 THE COURT: Go ahead, Mr. Morris.

3 MR. MORRIS: Thank you, Your Honor. The offering
4 memorandum itself is one of the documents that we filed under
5 seal, and we did so at the request of counsel to HCLOF. But
6 HCLOF has consented to our sharing up on the screen certain
7 very limited provisions of the document, without waiving the
8 request that the agreement otherwise be maintained under seal.

9 THE COURT: All right.

10 MR. MORRIS: So may I proceed on that basis, Your
11 Honor?

12 THE COURT: You may. Uh-huh.

13 MR. MORRIS: Okay. Ms. Canty, can you please put up
14 on the screen Demonstrative Exhibit #1? Okay. Can we just --
15 is there a way to just expand that just a bit, Ms. Canty?
16 Thank you very much. And if we could just scroll it up?
17 Thank you very much. Perfect.

18 Okay. So, Your Honor, this, as the footnote says, is an
19 excerpt from the offering memorandum that can be found at
20 Debtor's Exhibit AA. Double A. And this particular portion
21 of the offering memorandum is at Page 35.

22 THE COURT: Okay.

23 BY MR. MORRIS:

24 Q Mr. Seery, have you seen this portion of the offering
25 memorandum before?

1 A Yes, I have. But before I continue, I just -- I should
2 have checked. Are you able to hear me clearly? Am I speaking
3 too quickly or am I cutting out? I just want to make sure.
4 I'm using a different set of audio today.

5 THE COURT: All right.

6 MR. MORRIS: That's fine.

7 THE COURT: I hear you very well.

8 MR. MORRIS: Yeah.

9 THE COURT: So I think we're good right now. Thank
10 you.

11 THE WITNESS: Yeah. Thank you, Your Honor. I was
12 just checking.

13 THE COURT: Okay.

14 THE WITNESS: In response to your question, Mr.
15 Morris, yes, I have seen this before.

16 BY MR. MORRIS:

17 Q Okay. And can you -- did you form a view in doing the due
18 diligence as to the adequacy of this disclosure?

19 A Yes, I did.

20 Q Can you share your -- or share with Judge Jernigan the
21 Debtor's view as to the adequacy of this disclosure concerning
22 the litigation between Highland and Acis?

23 A With respect to the litigation between Highland and Acis,
24 or, really, between Acis, Highland, and Highland's principals
25 and Acis's principal, totally inadequate. The disclosure here

1 is very high-level. And if there were no other litigation
2 going on, it might serve to suffice. It basically says, In
3 our business, because we invest in distressed loans, there's a
4 lot of litigation around distressed investments, and that's
5 what we have. And then it says, We've talked with the
6 investor about other things and we're -- we think that's
7 enough.

8 Q Is there anything in this portion or anywhere in the
9 offering memorandum that you're aware of that disclosed to
10 HarbourVest that in the weeks leading up to the investment
11 Highland was engaged in the fraudulent transfer of assets away
12 from Acis?

13 A No. And I apologize, because I think it's -- I've
14 conflated two provisions. This one only deals with the very
15 high-level nature of the business. It doesn't give any
16 indication that there's any material litigation going on
17 elsewhere with respect to Acis.

18 I believe there's another provision that says, We -- we
19 have talked to -- oh, here -- I'm sorry. It is here.
20 Shareholders have had an opportunity to discuss with Highland
21 to their satisfaction all litigation matters against Highland
22 and its affiliates unrelated to its distressed business.

23 That, in my opinion, is wholly inadequate.

24 Q Okay.

25 MR. MORRIS: And let's put up -- actually, let's just

1 move on.

2 BY MR. MORRIS:

3 Q Let's go to the settlement itself.

4 MR. MORRIS: Can we put back up Demonstrative Exhibit
5 #3?

6 BY MR. MORRIS:

7 Q Mr. Seery, can you see that?

8 A Yes, I can.

9 Q Does this generally describe the net economic recovery of
10 the HarbourVest settlement based on estimated recoveries for
11 general unsecured creditors as of November 2020?

12 A As of November 2020, it does. And you alluded to this in
13 your opening, but to be clear, the numbers have shifted.
14 Costs have increased. The -- so the -- effectively, the
15 numerator, in terms of distributable value that we estimate,
16 is lower. And settlements, the denominator, have also
17 increased. So the claims against the estate that have been
18 recognized have increased. And that, that probably takes it
19 down closer, in our view, to about seventy cents distribution,
20 a number closer to nine to ten million, maybe a little bit
21 less.

22 However, there's also some additional value that we -- we
23 believe we will recover directly. There are north of \$150
24 million of intercompany notes owed by Dondero entities to
25 Highland. A number of those notes are demand notes, and we've

1 already made demand. We'll be initiating actions next week.
2 So those are -- those value, we believe, we'll recover
3 directly from Mr. Dondero and from related entities.

4 To the extent those related entities don't have value, we
5 feel very strongly about our ability to pierce the veil and
6 reach in to Mr. Dondero. And then his assets, either his
7 personal assets or the assets that he claims are in trusts.

8 In addition, there are a significant amount of notes that
9 were extended in two -- I believe around 2017, for no
10 consideration. Those notes were demand notes, I believe, and
11 then extended it 30 years. So they have 2047 maturities.
12 Those were probably going to have to be subject to fraudulent
13 conveyance type actions or -- or some sort of sale at a very
14 discounted value because third parties wouldn't want long-
15 dated notes with Mr. Dondero as the counterparty for very much
16 money.

17 Those -- they defaulted on some of those parties, so we
18 effectively turned them into demand notes. We've accelerated,
19 and we'll be bringing actions against those entities next week
20 as well.

21 So I think (garbled) have come up, so I apologize. One
22 way of saying I think the sixteen and a half is a bit high
23 right now, based upon what we know, but the value is going to
24 be higher than our estimate a couple of weeks ago because we
25 do believe we'll be able to recover on the notes.

1 One additional caveat, just to be fully transparent here.
2 This summary with the 16.8 doesn't include the subordinated
3 piece of this -- of this claim and our resolution. That --
4 recovery of that piece will be dependent upon the success of
5 litigations.

6 In order for the subordinated piece to get paid, all
7 general unsecured claims in Class -- Classes 7 and 8 will have
8 to be paid in full. And then -- and then the subordinated
9 class in Class 9, which we believe UBS will have a piece of,
10 and HarbourVest will have a piece of by this settlement, those
11 will be able to recover, and those will be based upon other
12 claims of action against -- primarily against related parties.

13 Q And then that last point, is that what's reflected in
14 Footnote 3 on this page?

15 A That's correct, yes.

16 Q Okay. And just for the record, there's a reduction in
17 value of \$22-1/2 million. Do you see that?

18 A Yes.

19 Q And can you just explain to the Court what that is and how
20 that value was arrived at?

21 A Yes. I may be getting slightly ahead of you, Mr. Morris.
22 But to give the Court a reflection of the transaction -- and
23 we can go into the details in a moment -- ultimately, the
24 transaction we structured we think is very fair both
25 economically to the Debtor, but there -- there is some

1 complexity to it to satisfy some of HarbourVest's concerns
2 that they be able to effectively rescind the transaction, at
3 least from an optical perspective. Value was important, but
4 optics were as well. The twenty-two and a half is the current
5 -- actually, the November value of HCL -- the HarbourVest
6 interests in HCLOF. And that's based upon Highland's
7 evaluation of those interests.

8 So we do believe that that is a fair value as of that
9 date. It has not gone down. It hasn't gone up explosively,
10 either, but it hasn't gone down. We think that's good, real
11 value. That value is in the Acis CLOs, the equity in those
12 CLOs, which is 2 through 6, that we -- we will be working with
13 the HCLOF folks to get Mr. Terry to monetize those assets and
14 those longer-dated CLOs.

15 In addition, I think it's 85 percent of the equity in Acis
16 7 -- Acis 7 is managed by Highland -- that is also beyond its
17 reinvestment period. And in talking to the directors -- and
18 they're new directors, and I'll get to that in a minute, for
19 HCLOF -- they'll seek to push Highland, which is the
20 reorganized Highland, to monetize that asset, with due regard
21 to fair value.

22 In addition, Harbour -- HCLOF owned a significant amount
23 of the preferred or equity pieces, if you will, in the
24 Highland CLO, 1.0 CLOs. As we've talked about, those are not
25 really CLOs. Those are effectively closed-end funds with

1 illiquid assets, primarily illiquid assets in them. We've had
2 some dispute in front of the Court about selling the liquid
3 assets in them, which we can go into it another time. Those
4 are being liquidated in the market at fair value.

5 But HCLOF also is a significant holder of those preferred
6 shares, and those directors would -- have indicated to me that
7 they would like to see those interests also monetized.

8 Q All right. Let's shift gears for a moment to talk about
9 the diligence that the Debtor did before entering into this
10 agreement. Can you just describe for the Court generally the
11 diligence that was undertaken at your direction?

12 A Well, when we first received the reply to our objection,
13 we dug into that reply and the specifics in it very
14 aggressively. So we reviewed all of the underlying documents
15 related to the original transaction. We discussed with
16 counsel the legal basis for the HarbourVest claims. We
17 interviewed our own HCMLP employees who were involved in the
18 transaction and tested their recollection, specifically around
19 who dealt with HarbourVest, who had the discussions with
20 HarbourVest, what was disclosed to HarbourVest with respect to
21 the Terry dispute and the Acis litigation.

22 We also had done, as I think the Court is well aware from
23 prior 9019 testimony, extensive work around the transfers and
24 the issues related to Acis. So we were familiar with their
25 impact on HCLOF.

1 We also did extensive work valuing the remaining HCLOF
2 interests to get a good feel of not only how much HarbourVest
3 originally invested, but how much they actually lost in this
4 transaction. And as I said, their original investment was
5 around, in total, in two tranches, about \$80 million, of which
6 they got about \$5 million back, and they've lost \$22 million.
7 So it -- I mean, remaining with \$22 million. So they've lost,
8 you know, in excess of \$50 million.

9 Q Do you recall whether the Debtor reviewed and analyzed all
10 of the documents that were cited in HarbourVest's response to
11 the Debtor's objection to the HarbourVest proofs of claim?

12 A Yeah. I think -- I forget, to be honest, which -- exactly
13 what documents were in there. But we went through their
14 objection with a fine-toothed comb, not only with respect to
15 the issues related to the Acis case, but also their references
16 to Guernsey law, other U.S. law, any of the documents between
17 the parties. And obviously, as I mentioned before, the
18 offering memorandum.

19 MR. MORRIS: Your Honor, I would just note for the
20 record that Debtor's Exhibits I through X are all of the
21 documents that are cited in HarbourVest's response to the
22 Debtor's objection to the HarbourVest proofs of claim, and
23 those are the documents that Mr. Seery just referred to.

24 THE COURT: All right.

25 MR. MORRIS: Just, they're in evidence now, and I

1 just wanted the Court to understand why they're in evidence.

2 THE COURT: Okay. Thank you.

3 MR. MORRIS: You're welcome.

4 BY MR. MORRIS:

5 Q Let's talk about the Debtor and whether or not it had or
6 has any viable defenses. Did the Debtor form any views as to
7 whether or not it had any defenses to the HarbourVest claims?

8 A Yes, we did.

9 Q Can you describe for the Court the defenses that were
10 reviewed and analyzed by the Debtor?

11 A Yeah. I think we -- we had very significant defenses.
12 So, first and foremost, with respect to the original proof of
13 claim, as I mentioned earlier, it alluded to the expenses and
14 the overcharge. And I think with respect to the 15 million of
15 fees that were charged to HCLOF by Highland, we didn't have a
16 lot of defenses to that claim.

17 It's pretty clear, by any fair view of the Acis case, that
18 HCLOF, as the investor in the Acis CLOs and the Highland CLOs,
19 had no real responsibility for fighting with Acis and Josh
20 Terry and shouldn't have been charged those fees. I don't --
21 I don't think there's a legitimate investor that would
22 actually think that that was an appropriate amount to be
23 charged to a fund.

24 However, the claim was not as broad -- the proof of claim
25 was not as fulsome in terms of discussing and only vaguely

1 referred to other damages. So we did -- we did, as a
2 threshold matter, think about whether we could argue that it
3 was time-barred because they had not met their obligations to
4 fully disclose under the proof of claim.

5 Secondly, we considered the defenses to the overall claim
6 of fraudulent inducement. Our perspective was that if we
7 could stop the claim of fraudulent inducement, the damages
8 would likely be limited to the 15 and maybe some -- some other
9 damages. With respect to the 15, again, the problem that we
10 had when we got past -- past motions for summary judgment is
11 the factual predicate for our defense was going to be that we
12 divulged these things to HarbourVest and that they did not
13 reasonably -- it was -- reasonably rely on some failure to
14 divulge because they're a sophisticated investor.

15 The problem with that defense is that our witnesses, which
16 really would have primarily been Mr. Dondero and Mr.
17 Ellington, and one other employee who runs the CLO business,
18 Mr. Covitz, would not be pretty good. They've been -- two of
19 them have been in front of this Court and they're not viewed
20 favorably and their testimony would be challenged and
21 potentially suspect.

22 So that gave us a real focus on trying to make sure that
23 we could, if we had to litigate, that we would litigate around
24 the fraudulent inducement.

25 As I said, reasonable reliance, what was disclosed, lack

1 of digging into the public record, because you don't have to
2 go far on Google to find "fraud" within two words of
3 "Highland," and the tremendous, you know, litigious nature of
4 Highland. You know, even at that point, when this investment
5 was made, aside from Mr. Terry's arbitration, which by that
6 point, at least by the time (inaudible) was public, there was,
7 you know, significant public disclosure around the Credit
8 Strat and the litigation, the Crusader litigation, the UBS
9 litigation, the, gosh knows, the Daugherty litigation.

10 So our defense was going to be that you should have
11 figured this out, you're a sophisticated investor, and you
12 should have been able to figure out that there was significant
13 risk that, with respect to Mr. Terry, that Mr. Dondero would
14 not stop litigating and that those costs would put significant
15 risk on the investment.

16 The problem with that, as I mentioned earlier, is that the
17 OM is wholly deficient. If you have a typical risk factor in
18 the offering memorandum, you would have disclosed that there
19 was a litigation with Mr. Terry, a former partner in the
20 business, and that the Debtor had no intention of settling it.
21 There was no intention of settling. That litigation would go
22 on. It could go on for years and it could result in
23 bankruptcy or attachments and other risks to the business, and
24 that the investor should be fully aware that the Offeror does
25 not intend to be involved in any -- or the manager, in any

1 settlement with Mr. Terry, and the fact it undermined the
2 investment. That wasn't there.

3 But that was our preliminary focus, to try to stop fraud
4 in the inducement. And then we -- we had specific facts
5 related to that. You know, once they knew about the
6 bankruptcy in HarbourVest of -- I'm sorry, of Acis,
7 HarbourVest made a second funding, which was there was a -- it
8 was an initial \$75 million draw, and then a second, I believe,
9 about a \$5 million draw, which was in -- I believe in
10 February. And they made it without -- without objection, and
11 that was after the commencement of the bankruptcy.

12 In addition, they were -- they were active in the
13 bankruptcy, so the -- some of the things that happened in the
14 bankruptcy, there were many opportunities to settle that case,
15 from our examination, all of which were turned down to -- by
16 Mr. Dondero. But you don't see HarbourVest pounding the table
17 to settle, either, either with respect to the Oaktree
18 transaction or any other transaction.

19 Now, HarbourVest's defense to that is, well, we were
20 taking advice and all of our information from Highland, and we
21 were getting that information directly from senior folks at
22 Highland why -- what the value was and why we shouldn't do
23 those things. We thought that that would mitigate some of the
24 arguments that -- some of the damages that we might have, I'm
25 sorry, if we -- if we lost.

1 But the focus at that point, you know, our legal strategy,
2 was can we stop HarbourVest at the very forefront to say,
3 You've got to come into the factual realm and get out of the
4 fraud in the inducement realm. And then the defenses and the
5 exculpations and the liability limitations in the documents
6 would also come into play.

7 So that -- those are some of the defenses that we focused
8 on and our analytical thinking around them.

9 Q So, if the Debtor had viable defenses, why is it settling?

10 A Well, this is a significant claim. And we -- we looked at
11 it with respect to both the impact on the case, but, really,
12 the merits of the claim.

13 As I said, there's really little dispute that the legal
14 fees should not have been charged to HarbourVest. We think
15 based upon the testimony in Acis, the suspect credibility of
16 those who would have been our witnesses, and the experience in
17 Acis that the Court has had in terms of the completely hell-
18 bent on litigation, it would be hard for anyone to justifiably
19 defend those fees being charged. So, as an initial matter, we
20 had exposure there.

21 In addition, if HarbourVest got by our defense of -- was
22 able, for example, to claim fraud in the inducement, then we
23 were open to significant damages.

24 We really didn't put much value, frankly, on the RICO part
25 of it. We think that that's waved around often to show treble

1 damages. Although in this case certainly somebody could lay
2 out the predicate acts and put forth a RICO-type argument, we
3 just didn't think that that had real merit in this commercial
4 dispute, even with a fraud claim.

5 But even without the trebling of the damages, there's no
6 dispute that HarbourVest lost more than \$50 million in this
7 investment. You know, we -- we thought about that risk as
8 well.

9 In addition, because the case would really be fact-based,
10 even if we had a high degree of confidence based upon our
11 discussions with our employees and the factual testimony, it
12 was going to be expensive to litigate this case, and time-
13 consuming.

14 And so we looked at the economic value, the potential
15 risks, and the actual value that we were giving up, and found
16 this to be an extremely, extremely reasonable settlement.

17 Importantly, and I think what drove it, you -- one of --
18 one of the things that drove it is another one of our defenses
19 on why, notwithstanding their -- what they held out as
20 meritorious claims, I don't think HarbourVest really wanted to
21 publicly litigate this claim. And we were aggressive in our
22 discussions with HarbourVest of how we would litigate it,
23 which would be quite publicly.

24 Now, that may or may not be fair, but that does put risk
25 on the counterparty. And so I think that helped drive the

1 settlement.

2 In addition, the structure of the settlement we think is
3 extremely favorable to the Debtor and to the estate because,
4 rather than taking the full claim and putting it into a senior
5 unsecured position, we have bifurcated it. We did think about
6 whether this was a claim that could be subordinated under 510.
7 There won't be any arguments, I would be surprised if there's
8 arguments today that we didn't actually give to the Highland
9 employees who have given them to Mr. Dondero's respective
10 counsel.

11 We did structure it in a way that we thought gave
12 HarbourVest the opportunity to effectively claim a rescission,
13 even though that's not really what it is, and then be able to
14 claim that their recovery is based on the bankruptcy, which it
15 is, but not really dilute all the other stakeholders in the
16 case.

17 (Pause.)

18 THE COURT: Mr. Morris? Anything else?

19 MR. MORRIS: I can hear you, Your Honor.

20 THE COURT: Okay.

21 MR. MORRIS: I can hear you.

22 THE COURT: Okay. Now can you --

23 MR. MORRIS: I got cut off from Mr. Seery for a
24 moment.

25 THE COURT: Okay.

1 BY MR. MORRIS:

2 Q Okay. I appreciate that. Are you done giving the
3 Debtor's basis for entering into this settlement, Mr. Seery,
4 if you can hear me?

5 A I think so, but I think as the Court has probably seen, I
6 can go on.

7 Q Yes.

8 A So I will try to be -- I'll try to be more concise. But
9 this was a -- this was a difficult settlement. We felt good
10 about our defenses. Felt that we could -- we could try them.
11 But it would be extremely expensive, time-consuming, and there
12 would be a lot of risk. And settling at a level which we
13 believe is actually below the damages that were clearly caused
14 only by the fees was a -- was a -- is a -- is a very
15 reasonable settlement.

16 Q Okay. Let's just talk about the process by which we got
17 to the settlement. Do you recall generally when the
18 settlement negotiations have -- were commenced?

19 A I believe it was -- was late summer, early -- early fall.

20 Q Okay. Before I move on, I just want to go back to the
21 Acis matter that you were talking about, one last issue. Do
22 you know how, if at all, the injunction that was entered in
23 the Acis bankruptcy impacted or related to the HarbourVest
24 claims?

25 A Yeah. I -- yes, I do. And I believe it -- it did. I

1 think there's an argument, and we analyzed it thoroughly, that
2 the injunction effectively caused a lot of the damages.
3 Because if you look at the values of the equity that
4 HarbourVest had, the -- and HCLOF had in the CLOs, it went
5 down dramatically after the Trustee in the Acis case took over
6 and then subsequently, when the case was reorganized and Mr.
7 Terry took over, you know, with Brigade as the sub-advisor.

8 Now, that would -- you know, we would -- we could
9 certainly attempt to throw, in our defense, the causation at
10 Mr. Terry's feet or at Mr. Phelan's feet. HarbourVest's
11 retort is that none of this would have occurred but for the
12 burn-it-down litigation that Mr. Dondero engaged in with
13 Highland.

14 In addition, in Mr. Terry's defense, you know, he did try
15 multiple times with HCLOF, tried to petition, if you will, the
16 HCLOF entity to -- and directors, former directors, to reset
17 the CLOs to make them more economically viable, based upon the
18 current level of asset returns versus the debt costs in the
19 CLOs. And that was rejected by the HCLOF and the Debtor as
20 the controlling party of HCLOF. So, we thought about those
21 risks.

22 You know, similarly, the economic values in Acis 7 went
23 down pretty significantly from that date as well. So I think
24 there's -- there are some defenses, but that's really Mr.
25 Terry's issue, not our issue. So we thought about those

1 issues, we analyzed them, and we certainly did all the work
2 around month-to-month reductions in NAVs and how different
3 events in the Acis case might have -- might have caused those
4 and was that some sort of break from the original
5 transgression that HarbourVest claims, which was the
6 fraudulent inducement.

7 Q Do you recall that in November HarbourVest's motion under
8 3018 was scheduled to be heard?

9 A Yes.

10 Q And can you just tell the Court your understanding of what
11 the 3018 motion was about?

12 A Well, the 3018 motion was going to be on voting. And we
13 took the view that it really was not -- it shouldn't have been
14 that big an issue and HarbourVest should have been content
15 with just taking their actual losses of roughly a \$50-\$60
16 million claim for voting purposes and then we would move on.

17 HarbourVest was very insistent that they have a \$300
18 million claim, because they took the position -- and with
19 extensive documentation; not only the pleadings they filed,
20 but also detailed decks that were prepared by their counsel,
21 which they had presented to us on the merits of their claim --
22 that they were going to litigate for -- the 3018 and for the
23 full \$300 million value.

24 And that became the genesis, if you will, of the
25 negotiations to settle.

1 So, we started talking about the 3018. It was very
2 contentious. My apologies to Ms. Weisgerber and her counsel,
3 her partners, because it was a significant and contentious
4 negotiating call. But the reasons for that I think were that
5 -- their insistence on litigating the 3018 and our view that
6 this was just, you know, another -- another of a series of
7 delays and costs in this case that we really were hoping to
8 avoid.

9 That led to Mr. Pugatch and I stepping away from counsel,
10 no offense to counsel, you know, ours and his, to begin
11 negotiations around the potential for a settlement. First, it
12 started with a 3018, and then, you know, argued that we would,
13 if we got past the 3018, we were going to litigate this,
14 because we effectively had -- thought we could get everyone
15 else done at -- in and around that time. And I think we were
16 also probably a little bit optimistic about UBS at that time
17 and the mediation, which subsequently we have settled. But
18 that was the genesis of those settlements.

19 Q And how did the structure, how did the Debtor and
20 HarbourVest derive at the structure whereby there is a general
21 unsecured claim, there is a subordinated piece, and there's
22 the takeback of the HCLOF interest?

23 A Well, as I outlined, we -- we aggressively set forth our
24 various defenses. Their position was that they -- they should
25 never have been in this transaction before. And they --

1 HarbourVest is, in essence, a fund of funds, and they have
2 investors, and it certainly wouldn't be their, I'm sure, the
3 best-performing asset in their portfolio, to have made this
4 investment and lost \$50 million over this period of time. So
5 they felt strongly that they should never have been in this
6 investment, and but for the failure to disclose and the
7 improper disclosures, they would not have been in this
8 investment.

9 So, optically, getting out of it was important to them,
10 and that led to our idea and construction of a subordinated
11 claim and the transfer of the HCLOF interests to the estate.

12 Importantly, the HCLOF interests, as I mentioned, are --
13 the investments are in the Acis CLOs controlled by Acis and
14 Mr. Terry. The reorganized Acis. As well as the 1.0 CLOs and
15 the Acis 7.

16 So we were keenly focused on, if we were going to get that
17 interest, would we then have the majority control in HCLOF,
18 which we will, and would we be able to drive the recoveries,
19 as opposed to what Highland typically does in these
20 investments is use other people's money, drive down the value,
21 and then try to buy back the interest on the cheap.

22 Q Just in terms of timing, because I think there was a
23 suggestion in one of the openings that there was something
24 untoward about the timing here: At the time the liquidation
25 analysis was prepared on November 24th, had the Debtor reached

1 any agreement in principle with HarbourVest?

2 A If we had, it would have been reflected, so I don't -- I
3 don't think we were agreed by then. I don't recall the
4 specific dates, but if we had, it would have -- it would have
5 been reflected.

6 Q If I can refresh your recollection that the motion was
7 filed on December 24th, does that help form your understanding
8 or refresh your recollection that there was no agreement in
9 principle on November 24th?

10 A Yeah. Well, I'm quite sure there was no agreement in
11 principle or we would have reflected it minimally by a
12 footnote. There's -- there's no chance. It's a material
13 reduction in the claims pool that we were previously telling
14 people that, at least for purposes of distribution, like UBS
15 and a couple others we said we thought we would get to zero
16 on. So we didn't calculate in that amount. So I'm quite sure
17 we didn't have a deal when we filed the disclosure statement.

18 In terms of the timing, anyone who's done this business
19 for any degree of time knows that the crucible of bankruptcy
20 brings people to the settlement when they see something
21 happening in the case, and not before. I think HarbourVest
22 looked at our -- this is my supposition -- HarbourVest looked
23 at our plan, our ability to get this done, our settlement with
24 Redeemer, our settlement with Mr. Terry and Acis, and saw that
25 this plan was coming together, and if they didn't think about

1 the settlement, they were going to think about not only the
2 risks that we laid forth for them with respect our defenses,
3 but also the opportunity to litigate with the Claimant Trustee
4 over a long period of time, which couldn't have been
5 particularly appetizing.

6 Q Can you describe for the Court the role played by the
7 independent board of Strand, the general partner of the
8 Debtor, in analyzing and participating in the approval
9 process?

10 A Yes. I think, as the Court is aware and I've testified
11 before, Mr. Russell Nelms and Mr. John Dubel are fellow
12 independent directors with me, appointed pursuant to the Court
13 order. They are kept abreast of every detail, and -- along
14 the way, not just in a summary form at the end. We have
15 reviewed and analyzed collectively each of the issues. Mr.
16 Dubel has extensive experience in these types of litigation
17 matters. Obviously, Mr. Nelms, from his -- both his practice
18 and his time on the bench, has a keen insight into how to
19 resolve and what the risks and benefits are from settling
20 litigation. So I consult them every step of the way.

21 Q And as part of this process, did the Debtor reach out to
22 the directors of HCLOF?

23 A Yes, we did. So, we reached out and we've had several
24 conversations on video chats with the directors. The
25 directors of HCLOF are two new gentlemen, Mr. Richard Boleat

1 and Mr. Dicky Burwood. They are extremely professional. They
2 are exceptionally well-informed. They are truly careful, and
3 I would say very experienced professional not only directors,
4 but experienced in -- in these matters, both in respect of
5 structured finance as well as these types of vehicles and
6 litigation.

7 They were appointed by the old directors, Scott and
8 Bestwick, and they have been in control. They have outside
9 counsel, which is King & Spalding in the U.S. They have
10 Guernsey counsel. They have accountants and professional
11 advisors, and are being, in my opinion, exceptionally careful.
12 I've got -- very quickly developed a lot of respect for them,
13 and we consulted with them on this settlement and how it would
14 work.

15 They've been very clear that they represent HCLOF and they
16 work for the benefit of the equity, whomever owns it, and
17 taking a view that they would like to see these assets
18 monetized swiftly, with due regard to value, for the benefit
19 of the equity.

20 Q And is it your understanding that the directors of HCLOF
21 approved of this transaction?

22 A They -- I don't know that their approval was required.
23 It's really -- there are a number of hoops to jump through
24 under the documentation, including opinion of outside counsel
25 that we received from WilmerHale in terms of the effectiveness

1 of the transfer under the documents. We had a negotiation
2 with -- with those directors, and making sure that we did
3 everything correct -- correctly, excuse me -- with respect to
4 the requirements for the transfer under the documents. And
5 they've indicated their support and acknowledgement that we're
6 doing it correctly.

7 I don't know if it's fair to say they approved it. I'd
8 just have to go check the documents. But they certainly
9 support it. And I think they generally support our position
10 with respect to how to move forward with the assets.

11 Q I appreciate that. I guess I meant approval with a small
12 a and not a capital A.

13 You mentioned WilmerHale. Who do they represent in all of
14 this?

15 A WilmerHale is the Debtor's outside corporate counsel, in
16 particular with respect to the fund issues that we don't
17 handle in-house. We have significant support for fund issues
18 from the expertise of Mr. Surgent, who's been the CCO, and he
19 is also a lawyer, with respect to, you know, some of the
20 difficult fund issues that Highland has. But when we use
21 outside counsel, we use WilmerHale for that, and they've been
22 -- they've been exceptional.

23 Q Okay. Just the last two points that were made in Mr.
24 Dondero's objection, I believe. Did the Debtor overpay in
25 this settlement in order to gain the support of HarbourVest in

1 connection with its -- with the Debtor's attempt to get its
2 plan confirmed?

3 A Not in any way. My -- I believe the settlement is
4 extremely reasonable. As I testified, it's -- it's less than
5 the -- the actual value going out, depending on unless there's
6 successful litigation, and there well could be, is less than
7 on a pro forma basis the fees that were taken and charged to
8 HCLOF. We didn't do this for votes. We will have Class 2,
9 Class 7, Class 8, and Class 9. So I don't think that's a --
10 there's no vote purchasing, I think you called it. No, not at
11 all.

12 Q Yeah. Well, on that topic, I think the phrase that was
13 used was gerrymandering. Are you aware of the argument that's
14 been made that the subordinated claim was dropped in there in
15 order to gerrymander a positive vote for the impaired class of
16 Class 9, I believe?

17 A In a word, I would say that's preposterous. The -- as I
18 said, we have a number of classes that will vote for the plan.
19 The plan is -- the plan is a monetization plan. And if -- if
20 the creditors determine that they don't want to pursue this
21 plan, we'll go forward with another -- we'll try to get
22 another plan. We tried to have a grand bargain plan. We
23 tried to have a pot plan, as I've testified previously. I'm
24 quite certain that I've done more work on that than anyone
25 else, including Mr. Dondero and anybody who works for him.

1 And he hasn't been willing to do that.

2 This is a -- this is a plan that's come together. We
3 think it's going to be in the best interests of the estate.
4 That'll be confirmation next week. Or two weeks, I guess.
5 But I don't see how this is any way related -- this settlement
6 is not any way related to the voting on that -- on that -- on
7 that plan.

8 Q Just to put the finest point on it, is the Debtor relying
9 on Class 9 to be the impaired consenting class?

10 A No. I think -- I think what I've -- as I said, I believe
11 we already have the votes in Class -- I think it's 2 or 3, 7,
12 8, and -- and 9 will vote in favor as well. So that won't be
13 an issue.

14 MR. MORRIS: Your Honor, I have no further questions
15 of Mr. Seery.

16 THE COURT: All right. Pass the witness. I'll ask
17 HarbourVest counsel first: Do you have any questions of Mr.
18 Seery?

19 MS. WEISGERBER: No, Your Honor.

20 THE COURT: All right. Thank you.

21 What about cross-examination? Mr. Dondero's counsel?

22 CROSS-EXAMINATION

23 BY MR. WILSON:

24 Q Mr. Seery, how are you doing today?

25 A I'm well, thank you.

1 Q I'm John Wilson, and I represent Jim Dondero. I have a
2 few questions for you today.

3 Now, the HarbourVest proof of claims were filed on April
4 8th, 2020; is that your recollection?

5 A I believe that's correct. I don't recall the specific
6 date.

7 Q Okay. And do you know when you first became aware of the
8 HarbourVest claims?

9 A I believe it was early in the summer when we filed the
10 omnibus objection. It may have been in late spring, shortly
11 after that. I don't recall the specific date of the filing.

12 Q And before the time of the filing of the omnibus
13 objection, did Highland educate itself regarding the
14 HarbourVest proof of claims?

15 A I'm sorry, could you say that again? I didn't quite
16 understand it.

17 Q Before the omnibus objection was filed, did HarbourVest --
18 I'm sorry, did Highland educate itself on the HarbourVest
19 proof of claims?

20 A Not especially, no.

21 Q Okay. And -- but at some point, Highland did investigate
22 those proofs of claim, correct?

23 A That's correct.

24 Q And when would you -- when do you recall that that
25 investigation began?

1 A I don't recall the date, but the triggering event was
2 HarbourVest's response to our omnibus objection.

3 Q Okay. And that would have been filed September 11th of
4 2020?

5 A I'll take your representation. I don't -- I don't recall
6 the specific date.

7 Q Okay. And so when you began to investigate the
8 HarbourVest claims, what was your initial reaction?

9 A My initial reaction was that the -- the larger claims that
10 they were asserting -- the fraud in the inducement, the RICO
11 -- that those claims were, in my view, attorney-made and that
12 when we dug in and did the work, we saw that HarbourVest
13 clearly lost north of \$50 million on the investment. We had
14 just started to uncover the fee issue and saw the risk we had
15 there.

16 But I thought the bulk of those claims were attorney-made.
17 Clever, but attorney-made, as opposed to what I would think
18 are more legitimate. And so we started to develop our
19 defenses around that.

20 Q And was your initial reaction that the HarbourVest claims
21 were largely worthless?

22 A I think with respect to the claim around the fees, I
23 believed there was significant risk. With respect to the
24 other claims, I thought our defenses would make them
25 worthless, yes.

1 Q And did you ever represent to any party that the
2 HarbourVest claim was worth, at most, \$5 million?

3 A I think I represented often, including to HarbourVest,
4 that it was worth nothing. I don't recall if I specifically
5 said \$5 million. \$5 million would have been a nominal amount
6 to -- which is litigation costs. So it may -- it may have
7 been in my models that I put in that as a settlement amount,
8 but I -- I thought that there were valid and good defenses to
9 those larger claims.

10 Q And you recognize that HarbourVest was a large,
11 sophisticated investor, correct?

12 A Yes. I think they manage north of -- right around a
13 hundred billion dollars.

14 Q And you recognize that HarbourVest routinely structured
15 complex customized investments, correct?

16 A I believe that -- I don't know the intricate part of their
17 businesses, but as a fund of funds who does creative
18 investments, I think that they do do quite a bit of that.
19 This, I believe, was their first investment in the CLO space.

20 Q And it was not -- or I should say, you did not believe
21 that HarbourVest was simply a passive investor in HCLOF,
22 correct?

23 A I don't think that that's true, no.

24 Q You don't -- you don't believe that you denied their claim
25 to be a passive investor?

1 A Oh, I think -- I'm sure that in defense of their claims I
2 would argue that they were -- they were more than a passive
3 investor. But it was pretty clear when you look at the
4 structure of what they invested that there was an intent that
5 they be passive on their part. They didn't take a majority
6 interest.

7 In fact, Highland made it clear in the structure of the
8 deal that they couldn't -- it would be hard for them to get a
9 majority interest because Highland entities would control that
10 and Dondero-controlled entities or individuals would control
11 the majority.

12 I think that they -- they had hoped to be a passive
13 investor.

14 Q But was it not your position that HarbourVest was actually
15 an active, involved investor?

16 A I think our defense was going to be that they knew exactly
17 what was going on, that they participated, that they were
18 active, and that, indeed, that they were in and around some of
19 the subsequent issues in the Acis case.

20 Q And you understood that HarbourVest played a material role
21 in the various outcomes in the Acis bankruptcy case, correct?

22 A I don't believe that to be correct, no.

23 Q Have you ever made that representation to anyone before?

24 A Not -- not that I recall.

25 Q Well, do you recall giving statements to a reporter named

1 Syed Khaderi?

2 A I've never spoken to a reporter named Syed Khaderi in my
3 life.

4 Q Well, did you participate in the preparation of statements
5 to be given to Syed Khaderi?

6 A I've never heard of Syed Khaderi, nor have I participated
7 in any preparation of statements. I don't know who that is.

8 MR. WILSON: All right. I'm going to have Bryan
9 Assink put on the screen a document.

10 And Bryan, can you go to Page 7? Bottom of -- the top of
11 Page 7. Well, actually, before you do that, go to the very
12 top of the document.

13 BY MR. WILSON:

14 Q Now, Mr. Seery, are you familiar with Lucy Bannon?

15 A Yes.

16 Q And who is Lucy Bannon?

17 A She is the Highland public relations person.

18 MR. WILSON: Okay. Now go back to Page 7.

19 BY MR. WILSON:

20 Q Now, do you -- do you see on your screen an email of
21 September 14th from Syed Khaderi that says, Hi, Lucy, how are
22 you?

23 A Yes.

24 Q Have you seen this email before?

25 A Not that I recall, no.

1 Q All right. It continues on that, I saw the filing on
2 Friday about HarbourVest claims against Highland for a CLO
3 investment, and I'm looking to put out a report tomorrow
4 morning London time. Ahead of that, I wanted to check if
5 Highland would like to comment on the matter.

6 MR. MORRIS: Your Honor, this is -- the Debtor
7 respectfully objects. A, this document is not in evidence.
8 B, it's rank hearsay.

9 THE COURT: Response, Mr. Wilson?

10 MR. WILSON: Your Honor, I am attempting to
11 authenticate this document, but I'm using it in rebuttal to
12 the testimony that Mr. Seery just offered.

13 THE COURT: All right. I'll allow it. Overrule the
14 objection.

15 MR. WILSON: All right. Thank you, Your Honor.

16 BY MR. WILSON:

17 Q All right. Now, if we -- and oh, that September 14th
18 date, that was three days after the September 11th date that
19 we discussed was the date that HarbourVest filed its response
20 to the omnibus objection, correct?

21 A Yes. If that's the date that they filed it, then I -- if
22 you're representing that, I concede that the 14th is three
23 days after the 11th.

24 Q All right. And if you go back to the first page of this,
25 it looks like, on the following day, Lucy Bannon sends an

1 email to you, and is that your email address,
2 jpseeryjr@gmail.com?

3 A That's correct, yes.

4 Q And do you recall receiving this email from Lucy Bannon?

5 MR. MORRIS: Your Honor, I renew my objection that
6 this is hearsay. He's not rebutting anything that Mr. Seery
7 testified to. He testified that he'd never heard of the
8 gentleman at the bottom of the document. There's nothing in
9 this document that rebuts Mr. Seery's testimony at all.

10 THE COURT: Response, Mr. Wilson?

11 MR. WILSON: Well, I'm not -- I'm not trying to rebut
12 his statement that he hadn't -- that he hadn't heard of Syed
13 Khaderi. My rebuttal is attempted to -- attempting to show
14 that he has made various statements that he denied.

15 THE COURT: I'll overrule the objection.

16 BY MR. WILSON:

17 Q All right. So, back to this exhibit, Mr. Seery. You
18 recall receiving this email from Lucy Bannon on Tuesday,
19 September 15, 2020?

20 A Not specifically. But to be clear, I recall talking to
21 Lucy Bannon about the HCMLP dispute with HarbourVest.

22 Q Okay. And --

23 MR. WILSON: Bryan, can you go down to the next page?
24 Scroll down to where -- the James Seery email.

25 BY MR. WILSON:

1 Q Do you see this email on your screen that's dated
2 September 15, 2020 at 10:33 p.m.?

3 A Yes, I do.

4 Q And do you recall sending this email to Lucy?

5 A Not specifically, no.

6 Q Well, do you deny that you sent this email to Lucy?

7 A It appears to be my email.

8 MR. WILSON: Your Honor, we would move to admit this
9 document into evidence as Dondero Exhibit Letter N.

10 THE COURT: Any objections?

11 MR. MORRIS: I would consent to the admission of Mr.
12 Seery's email, but the balance of it ought to be excluded as
13 hearsay.

14 THE COURT: What about that?

15 MR. WILSON: Well, Your Honor, I think that this
16 document -- and I'll get into this in a little more detail in
17 a second -- but I think this document is a combination of the
18 work product of Lucy Bannon and Mr. Seery in preparing a
19 response for the reporter who requested comment from Highland.

20 THE COURT: Okay. I --

21 MR. MORRIS: Your Honor, um, --

22 THE COURT: Go ahead.

23 MR. MORRIS: I just -- I do question how they got
24 this document, but that's for another day. That's number one.
25 Number two, in addition to the hearsay argument, I just --

1 relevance grounds.

2 THE COURT: Okay. I'll allow the portion that is the
3 communication of Seery, that portion of Exhibit N. All right?

4 MR. WILSON: Okay. With due -- thank you, Your
5 Honor. With due respect, I -- to use that portion, I need to
6 refer to the portion below it, because he says, Good to submit
7 with your final edit/revisions. And so we need to know what
8 those final edit/revisions are, which are contained in the
9 email directly below that on the document that was four
10 minutes earlier in time.

11 THE COURT: All right. Fair enough. That'll be
12 allowed.

13 MR. WILSON: All right. Thank you, Your Honor.

14 (James Dondero's Exhibit N is received into evidence as
15 specified.)

16 MR. WILSON: So, Bryan, now can you scroll to the
17 next page? Oh, actually, let's just -- let's just stop at the
18 top -- at the bottom of the page. What's this statement?

19 BY MR. WILSON:

20 Q So, to be clear, Mr. Seery, when -- in response to Mr.
21 Khaderi's request for information and comment, you prepared
22 actually two responses, and one of those was a statement on
23 the record attributed to a spokesperson for HCMLP or something
24 along those lines. And then --

25 MR. WILSON: Can you scroll down to that next page?

1 BY MR. WILSON:

2 Q And this says -- I think part of this got cut off for some
3 reason, but it looks like the official statement is in
4 quotation marks. It says, "We dispute the allegations made in
5 the filing and believe the underlying claims are invalid and
6 will be found to be without merit. Our focus continues to be
7 treating all valid claims in a transparent, orderly, and
8 equitable manner, and vigorously disputing meritless in the
9 court. That focus will assure that HCMLP's reorganization
10 process -- progress is towards an efficient and equitable
11 resolution."

12 And then below that there's another section of this email
13 that says, Background/Clarification, Not for Attribution. And
14 do you know the purpose of this second section of the
15 response?

16 A Do I know the purpose of that? Yes.

17 Q And what would that purpose be?

18 A Ms. Bannon was speaking on background to reporters. As I
19 said earlier, I've -- I never heard of the gentleman from
20 London. If he's at the bottom of the email, I didn't pay any
21 mind, never heard of him. Nor have I heard it since. Ms.
22 Bannon didn't ever reference the specific person.

23 But she is the public relations person. So, as I
24 testified earlier, she does communicate with the press. And
25 as I previously testified when Mr. Morris questioned me, one

1 of our tactics and our defenses for HarbourVest was going to
2 be that we were going to be very public and aggressive about
3 the investment and it would have a negative impact or negative
4 perspective for viewers, in our opinion, about HarbourVest's
5 investment.

6 Q All right. Well, look with me in the middle of that
7 paragraph right after the closed parenthetical, where it says,
8 "But it's important to note the background of HarbourVest's
9 active and deep involvement in the investment of which it now
10 complains."

11 And so it was your position that HarbourVest had an active
12 and deep involvement in the investment, correct?

13 A No. I don't think that's correct. Ms. Bannon prepared
14 the statement, it was a litigation defense on background, and
15 that's our -- that was our position for this purpose. It was
16 not my view that they were active and deeply involved. They
17 were certainly involved. There's no doubt about it. But they
18 got all their information, in our estimation and our research,
19 from Highland.

20 Q But in any event, you would agree with me that four
21 minutes after receiving this email, you approved this
22 statement to go out to the reporter, correct?

23 A No, that's not correct. That's -- this portion is on
24 background. That statement doesn't go out. The previous
25 statement was the official statement. This is the background

1 discussion that she would have. So, no, she was not
2 authorized in any way whatsoever to send that out. She was
3 authorized to have conversations with those general facts.

4 MR. WILSON: Okay. Bryan, go to the top, or the
5 bottom of the page immediately preceding that. That's it.
6 Yes, that's it right there.

7 BY MR. WILSON:

8 Q Now, you'll see that this email from Lucy Bannon on
9 September 15, 2020 at 10:29 p.m. starts off, "Jim, let me know
10 what you think of the below. And, again, the first would be
11 on the record and the second will be sent for information
12 purposes to ensure accuracy, not for attribution."

13 So the intent was that this -- that this entire statement
14 be sent to the reporter, correct?

15 A I don't believe that's correct. I think when she goes on
16 background she doesn't send them a written doc. It's got to
17 be clear to the reporter, at least my understanding is that
18 what on background means -- I've been involved with this
19 before -- is that typically that's done orally. I don't know
20 if she's done it in a written statement before. I have never
21 seen that done in a written statement before. You give the
22 official statement and then you walk the reporter through your
23 other views on background. And you're not quoted. And it's
24 usually attributed to a source with knowledge.

25 Q Okay. We'll come back to that in a minute. The next

1 sentence after the one I just read to you --

2 MR. WILSON: Go back to where we were on the
3 background.

4 BY MR. WILSON:

5 Q Now, we just read you the sentence that starts with, "Then
6 it's important." The following sentence says, "HarbourVest
7 was not simply invested in HCLOF as an ignorant,
8 unsophisticated, passive investor, but was an active and
9 informed participant in the inception of its investment
10 through all of the Acis bankruptcy proceedings, and
11 HarbourVest played a material role in various outcomes related
12 to that case and its impact on HCLOF."

13 And is it -- did you not just tell me before we
14 investigated this document that HarbourVest did not play a
15 material role in the various outcomes of the Acis bankruptcy?

16 A I don't know exactly what I said, but I think that's
17 correct, after we'd done the research on it, yeah.

18 Q But you took the position in this email that you approved
19 to go out to a reporter that says that -- that HarbourVest was
20 an active and informed participant in the inception of -- of
21 its investment through all of the Acis bankruptcy proceedings
22 and played a material role in various outcomes related to that
23 case and its impact on HCLOF. Can we agree with that?

24 A Yes.

25 Q And then the final sentence of this paragraph says that,

1 We believe that neither the facts nor the law support
2 HarbourVest's, quote, We-were-too-lazy-to-know allegations.

3 Whose words were those, "We-were-too-lazy-to-know
4 allegations"?

5 A I don't recall. They may be mine. It's aggressive the
6 way I am, so that -- that may well be the case.

7 MR. WILSON: All right. Go -- go down to the next
8 page.

9 BY MR. WILSON:

10 Q And with respect your comment that that second paragraph
11 would not have gone to the reporter, look at this email in the
12 middle of the page from Lucy Bannon to Syed Khaderi, September
13 16, 2020, at 1:51 a.m. And --

14 MR. MORRIS: Your Honor, this I will object to as
15 hearsay. There is no witness here to testify to anything on
16 this document.

17 THE COURT: All right. How about that?

18 MR. WILSON: Well, it's -- well, scroll up just a
19 little bit. This email at the top of the page is three
20 minutes after the one in the middle of the page, where Lucy
21 Bannon is forwarding this to James Seery, saying, See below
22 for responses sent to *Creditflux*. Will follow up with the
23 story when it runs or with any other updates.

24 MR. MORRIS: Your Honor, these --

25 MR. WILSON: So I think this --

1 MR. MORRIS: These documents don't appear on the
2 witness list. They're not being offered to impeach anything.
3 They're just -- he's taking discovery as we sit here.

4 MR. WILSON: Your Honor, in response, I'm simply
5 trying to rebut the statements that Mr. Seery made. In fact,
6 he told me just a minute ago that that second paragraph would
7 not have gone out to the reporter. However, this email from
8 Lucy Bannon to Syed Khaderi directly rebuts that statement.

9 THE COURT: But your whole purpose in this line of
10 questioning, with an undisclosed document, is to rebut the
11 earlier testimony he gave before you even put this exhibit in
12 front of him.

13 MR. WILSON: I'm trying to rebut multiple statements
14 that Mr. Seery has made today, and I think it -- you know, if
15 he's going to testify that this information did not go out to
16 a reporter, I think I'm allowed to rebut that to demonstrate
17 that it did.

18 THE COURT: All right. Why didn't you disclose this
19 in advance? It's feeling less and less like an impeachment
20 document the more we go through it.

21 MR. WILSON: Your Honor, I did not -- I did not
22 actually have this document at the time we filed our witness
23 and exhibit list, but I would also say that I didn't have any
24 purpose to use it if I didn't need it for rebuttal.

25 THE COURT: Okay. First off, you're supposed to

1 disclose all exhibits you anticipate using except those for
2 purposes of impeachment. Okay? Not rebuttal, to be
3 technical.

4 So, if you didn't disclose this exhibit, the only way you
5 can use it, subject to other possible objections, is if you're
6 impeaching a statement. And I'm just saying I think we're
7 going beyond trying to impeach the original statement and now
8 we're trying to impeach statements he's made after seeing
9 portions of the document.

10 What did you mean, you didn't have this document in time
11 to disclose it?

12 MR. WILSON: Well, I actually just received this
13 document this morning, Your Honor.

14 THE COURT: Where did you receive it from?

15 MR. MORRIS: From who?

16 MR. WILSON: I -- I honestly do not know the source
17 of this document, although it was provided to me by my client.

18 MR. MORRIS: Your client being Mr. Dondero?

19 THE COURT: Could you answer that, Mr. Wilson?

20 MR. WILSON: Yes, that's -- yes, that's correct.

21 THE COURT: All right. I will -- that's --

22 MR. MORRIS: Your Honor, I'd like to --

23 THE COURT: That's a different can of worms. But for
24 now, I sustain the objection. You're done questioning on this
25 document.

1 MR. WILSON: That's fine, Your Honor. I can move on.

2 BY MR. WILSON:

3 Q Now, Mr. Seery, you would agree with me that whether or
4 not HarbourVest played an active role in the Acis bankruptcy,
5 it was kept apprised of the -- of the ongoings in the
6 bankruptcy? (Pause.) I'm sorry. Could you hear that?

7 A Yes. My understanding is that -- that they were.

8 Q And in fact, did Highland have weekly conference calls
9 with HarbourVest during the Acis bankruptcy to discuss what
10 was going on in the bankruptcy?

11 A I don't know if they were weekly. I've been told that
12 they had regular calls updating HarbourVest, yes.

13 Q Okay. And did Highland produce over 40,000 pages of
14 documents to HarbourVest related to the Acis bankruptcy?

15 A I'm not aware of that, no.

16 Q Have those documents been provided to you?

17 A I hope not.

18 Q So, in your role --

19 A I'm sorry. I don't -- I didn't receive 40,000 documents
20 from anybody.

21 Q Well, did you receive any number of documents that were
22 provided by Highland to HarbourVest during the Acis
23 bankruptcy?

24 A I wasn't involved in this during the Acis bankruptcy. I'm
25 sorry.

1 Q Well, I'm referring to, after you became involved in this
2 Highland bankruptcy, whether you were provided with these
3 documents that were sent from Highland to HarbourVest.

4 A I don't -- I don't know what the documents are. I've
5 reviewed tons of documents with respect to the HarbourVest
6 claims, but I don't know of the documents to which you're
7 referring.

8 Q Okay. And after you performed your investigation into the
9 HarbourVest claim, what was your opinion as to the cause in
10 the reduction in value of HarbourVest's investment in HCLOF?

11 A I think the main cause of the reduction in the investment
12 was the imposition of the Trustee and the failure of Highland
13 HCLOF and then subsequently with the injunction to reset the
14 CLOs.

15 You know, these are -- these are some of the worst-
16 performing CLOs in the market because they weren't reset. And
17 when the liabilities of the CLOs are set at a level to match
18 assets, and then liability -- the assets run off, and the
19 asset financings or the new deals come in at much lower
20 levels, and the obligations of the CLO are not reset, the
21 arbitrage that is the CLO shrinks. And that's what happened
22 to these CLOs.

23 Q And during the course of the Acis bankruptcy, Acis and
24 Brigade were given management responsibilities over the CLOs
25 and HCLOF, correct?

1 A I believe that the Trustee had the overall, and then
2 subsequently, with the confirmation of the plan, they took it
3 over. So I think that ultimately Mr. Terry had the management
4 authority, full management authority, and some advice through
5 Brigade. But I think technically it wasn't actually during
6 the Chapter 7. The Chapter 7 proceeding, I believe that Mr.
7 Phelan had the actual authority.

8 (Echoing.)

9 Q I'm sorry. And so your testimony is that Mr. Phelan had
10 the actual authority but he delegated that authority to Josh
11 Terry and Brigade?

12 A I think that's fair, yes.

13 Q And do you know when that occurred?

14 A I believe that the control of the CLOs was in July of
15 2018, and then the ultimate confirmation of the case was at
16 the very beginning of '19.

17 Q So, after being instituted as portfolio manager, and
18 during the time when Acis and Brigade were working under the
19 direction of the Trustee, who would have receive the fees for
20 managing those portfolios?

21 A I believe -- I don't know. I believe the -- that the Acis
22 estate would have received those fees.

23 Q And who -- and so is that your testimony, that prior to
24 confirmation the Acis estate would have received the
25 management fees?

1 A I believe that -- I believe they would have if they were
2 the manager, yeah.

3 Q Okay. And who would have received the fees after
4 confirmation?

5 A Acis.

6 Q Okay. And who would have had the discretion to set the
7 amount of those management fees?

8 A They would be agreed to in the -- in the investment
9 management agreement.

10 Q They would be agreed to?

11 A Yes. As far as I've seen, I've -- I haven't seen
12 unilateral ability of a manager to set fees at its -- at its
13 whim.

14 Q So is it your understanding that Acis and Brigade ended up
15 charging substantially more fees than Highland had charged
16 when it was under Highland's management?

17 A I think the fees were -- the fees were -- the fees were
18 set by the agreement.

19 MR. MORRIS: Your Honor, I just object to the line of
20 questioning on relevance grounds. This is a 9019 hearing,
21 Your Honor. How -- I just don't think this has any relevance
22 at all.

23 THE COURT: All right. Mr. Wilson, what is the
24 relevance?

25 MR. WILSON: The relevance is that Mr. Seery has

1 testified that these Acis CLOs were among the worst-performing
2 in the market, and frankly, we would agree with that, and I'm
3 trying to get his understanding as to why, because I think
4 there's direct relevance in the reason that the value of the
5 HarbourVest investment diminished.

6 MR. MORRIS: I don't think that was his testimony,
7 Your Honor. But at the end of the day, Your Honor has heard
8 the litany of reasons why the Debtor is entering into this
9 agreement. I just, I just think it's irrelevant, Your Honor.

10 THE COURT: All right. Mr. Wilson, I barely think
11 this is relevant. I mean, I'm going to give you some benefit
12 of the doubt on that because of, you know, the testimony that
13 HarbourVest lost \$50 million of value and --

14 (Echoing.)

15 THE COURT: -- maybe that shouldn't, you know, lie at
16 the feet of Highland. I think the compromise reflects that
17 they don't -- it doesn't lie entirely at the feet of Highland.
18 But, you know, maybe two or three more questions.

19 MR. WILSON: Yes. Thank you, Your Honor. And I
20 didn't have very much more on this point. But to be a hundred
21 percent honest, I can't remember my question right before the
22 objection.

23 THE WITNESS: I think you were asking me about the
24 fees and somehow alluding or implying that the manager could
25 unilaterally set fees.

1 The fees are set in the investment management contract.
2 The manager doesn't get to wake up on Wednesday and say, you
3 know, I'd like another half a basis point. It doesn't work
4 that way.

5 BY MR. WILSON:

6 Q But you would agree with me that the fees and expenses
7 charged to an investment would impact the performance of that
8 investment in the market?

9 A Absolutely.

10 Q Would you also agree with me that there was one CLO -- and
11 I think you referred to it in your direct testimony -- but CLO
12 7, which continued to be managed by Highland?

13 A That's correct.

14 Q And is it fair to say that CLO 7 exceeded the performance
15 of the CLOs that were managed by Acis and Brigade?

16 A I think that's fair. I don't -- I don't recall the
17 magnitude, but I think it's outperformed those -- those CLOs,
18 yes.

19 Q All right. Well, thank you. I want to turn your
20 attention to the portion of the settlement agreement that
21 deals with voting of the HarbourVest claim. How did
22 HarbourVest's commitment to vote for the plan become a part of
23 the settlement?

24 A Pretty straightforward negotiation. We -- in negotiating
25 the settlement, one of the key factors was the cost and

1 expense of the litigation, in addition to the risk on the --
2 on the fees, and whether we could wrap this up in a global
3 settlement now. So in my experience, it's fairly typical, we
4 would try to do this in every settlement, have the settling
5 party, be that the claimant, agree to support the case and the
6 plan.

7 You know, we did not do that with the Committee members,
8 although we wanted to. (Echoing) I frankly still wish I had.
9 Those little -- little bits that have been difficult
10 (echoing). The Committee members have a different interest in
11 (echoing) than their more global interest for creditors at
12 large, which is more difficult than traditionally in
13 bankruptcy cases, less likely to have a Committee member, a
14 sitting Committee member, actually support the (echoing) of
15 the plan.

16 THE COURT: Mr. Wilson, could you be careful to put
17 your device on mute every time you're not talking? Because
18 we're getting some feedback loop from you when Mr. Seery
19 answers your questions. Okay?

20 (Echoing continues.)

21 THE COURT: Like right now. I'm hearing feedback of
22 my own voice through your speakers.

23 Right, Mike? Isn't that what --

24 A VOICE: I am, too.

25 THE COURT: Yes. Okay. So please be sure you put

1 your device on mute whenever you are not speaking. All right.
2 Go ahead.

3 BY MR. WILSON:

4 Q I mean, I think you just answered this question, but there
5 was -- there was no similar voting provision in the Acis or
6 the Redeemer settlements, correct?

7 A There is not, no. And just as a -- by way of explanation,
8 if it's okay, the reason was my counsel advised against it. I
9 did ask for it.

10 Q Your counsel advised against putting that voting
11 requirement in the Acis and Redeemer settlements?

12 A For the reasons I stated. And in my experience, that's
13 consistent, where sitting members of Committees don't
14 generally sign up to resolve their own claims and support the
15 plan because of their larger fiduciary duties to the creditor
16 body as a whole.

17 Q And during the settlement negotiations of the HarbourVest
18 claim, was this commitment to vote a topic of discussion?

19 A Not -- not particularly, no. It was pretty clear that
20 HarbourVest, if they were going to agree to the settlement and
21 the numbers, could see structure. Obviously, it wanted to
22 understand what the potential distributions would be under the
23 plan, but this was not a hotly-negotiated point.

24 Q And would you consider HarbourVest's commitment to vote
25 for the plan an important part of the settlement?

1 A I think it's an important part of the settlement, that the
2 part of the settlement is the subordinated claim. We could
3 put that into presumably any plan. But our plan does -- does
4 have a Class 9 for that. So I think it's a -- it's a part of
5 the settlement that is important or we wouldn't have included
6 it. It clearly wraps everything up and moves us towards
7 confirmation.

8 Q And would you have made the deal with HarbourVest if they
9 had pushed back on the commitment to vote for the plan?

10 A Yeah, I would have.

11 Q All right. Thank you.

12 MR. WILSON: No further questions.

13 THE COURT: All right. Mr. Draper, anything from
14 you?

15 MR. DRAPER: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. DRAPER:

18 Q Mr. Seery, I may not understand the settlement, and I
19 apologize, but the way I think the settlement reads, the
20 interest that you're acquiring, you have the right to place in
21 any entity. Is that my -- is that correct?

22 A I don't recall the -- the specifics, but just from a
23 structural standpoint, we wanted to be able to put it into a
24 subsidiary as opposed to putting it directly in HCMLP. If we
25 couldn't do that, we would -- we would put it into HCMLP. So

1 there wasn't a -- I don't recall the actual specifics, but we
2 certainly thought about holding that interest in a -- in a
3 subsidiary, just to have a cleaner hold.

4 Q Why aren't you putting it into the Debtor so the Court and
5 the estate have jurisdiction over that?

6 A I think the Court certainly has jurisdiction over an
7 entity that the estate owns a hundred percent of. I don't
8 think that's -- that's even a close call. So the important --

9 Q Now, --

10 A Can I finish?

11 Q Sure.

12 A You asked me why. To the extent that somebody thinks that
13 problematic, I will consent to the Court having complete
14 jurisdiction over it, since I control it a hundred percent.

15 Q No. The real reason is, if I remember correctly, Mr.
16 Dondero and Judge Lynn filed a motion to have some say or some
17 information as to sales by subsidiaries, and I think you took
18 the position that they weren't entitled to it. And so my
19 concern was that putting this in a subsidiary in a sense gave
20 you unfettered control without any review of the item.

21 A I don't -- I don't think that's the case where we --
22 there's a directly-held subsidiary where we own a hundred
23 percent of it. I don't think that that's the case.

24 Q Okay. But you're willing to (a) put this into the Debtor,
25 number one; and number two, have the estate and have the Court

1 have complete control over the disposition of it and its
2 actions, correct?

3 A That's not correct, no.

4 Q What -- what is incorrect about my statement?

5 A The debtor-in-possession has control of its assets. The
6 Court doesn't have complete control over its assets. There's
7 --

8 Q Well, --

9 A -- issues -- hold on a second. This is not -- this is not
10 a game and a trap. We put it in a subsidiary for specific
11 reasons. You asked why. I'm giving you the why. It's not to
12 hide it from anybody. We're not going to sell the asset
13 unless somebody comes up with a great price for it. We're
14 going to monetize the assets. We're going to control HCLDF by
15 a majority.

16 Q But, again, the issue is, if it's in the estate, the Court
17 has supervision over it. If it's not in the estate, the Court
18 has no supervision of it.

19 A I don't think that's correct, because the Court has
20 supervision over the estate, which owns a hundred percent of
21 the special-purpose entity that will own the shares.

22 Q Okay. All right. Now, let's talk about the \$15 million
23 that you discussed and the legal fees that were incurred. Is
24 that the total amount that was spent, or is -- or is that --
25 was the total amount \$30 million and HarbourVest was only

1 responsible for one half of it or functionally took the brunt
2 of one half of it?

3 A I think the total amount is between \$15 and \$20 million.
4 I don't have the exact numbers.

5 Q So, in fact, the HarbourVest loss due to its ownership
6 would have been one half of that, not \$15 million?

7 A Well, the vehicle lost the money. HarbourVest owned 49.98
8 percent of it, and Highland controlled the rest. So if you
9 allocate it that way, I suppose that would be a -- that's how
10 you would divide it, in -- roughly in half, yes.

11 Q And so HarbourVest's actual dollar loss due to the legal
12 fees is really the 49-point-whatever percent of \$15 million,
13 not \$15 million?

14 A I don't know if -- I certainly would argue that. I don't
15 think that HarbourVest has that position.

16 Q Okay. Now, in connection -- you were asked a question
17 about the documentation that was provided by Highland to
18 HarbourVest both during the bankruptcy of Acis and before.
19 You have control over the Harbour -- over the Highland server,
20 correct?

21 A I'm sorry. Can -- can we do two things? One is, Mr.
22 Draper, I can't see you, so it would be better if I could see
23 you during the questioning.

24 Q Okay.

25 A And could you repeat the question?

1 Q All right. I'll be happy to. You were asked a question
2 about the documentation that was provided by Highland to
3 HarbourVest during the Acis bankruptcy and meetings that took
4 place between the parties. Correct?

5 A Yes.

6 Q And you stated you were unaware of the material that was
7 sent over?

8 A I think I testified that I didn't receive the 40,000
9 documents that were mentioned.

10 Q Did you do any search or order a search of the Highland
11 server to see what material was sent over by any party to
12 HarbourVest to analyze what -- what information they had
13 available to them and what was provided to them?

14 A Yes, we did a search.

15 Q And did you review the documentation that was sent over?

16 A The -- the documentation that we looked at was very
17 specific to the investment and to the OM. So we didn't look
18 for the -- the supposed 40,000 documents, no.

19 Q Did you look for the material that was provided to them
20 during the Acis bankruptcy and the periodic meetings that you
21 discussed? Or that you testified to earlier?

22 A The answer is no.

23 Q One last question. I think, and just so I understand your
24 testimony, you've broken out the HarbourVest claim into two
25 pieces. One is the legal fee amount that we've just

1 discussed, and I gather the other piece of that is the fraud
2 in the inducement to enter into the CLO purchase?

3 A It's -- it's more -- it's much more than that.

4 Q Okay. Well, let me say it in a different way. The other
5 part of it is the losses as a result of the fraud in the
6 inducement to purchase the interest?

7 A I don't think that's -- that's fair. If I could explain?

8 Q Sure.

9 A Yeah. The legal fee piece is pretty clear. The other
10 piece starts with fraud in the inducement, but it's extensive
11 fraud claims. Fraud in the inducement, as I testified
12 earlier, would get them around the exculpation and liability
13 limitations in the OM. You don't get around all of those with
14 just the fraud. And so that's -- that's the split of that
15 claim. So the fraud in the inducement contains fraud
16 allegations. Even if you didn't have inducement, you'd have
17 other potential fraud claims.

18 Q But let me state it in a different fashion. But for the
19 investment, the fraud that you allege wouldn't have occurred?

20 A I -- HarbourVest alleges it.

21 Q No, I'm just -- in your analysis of the claim, but for the
22 inducement, the rest of the damages wouldn't have flowed?

23 A That's HarbourVest's position, yes. But for the fraud,
24 they wouldn't have made the investment.

25 Q All right.

1 MR. DRAPER: I have nothing further for this witness.

2 THE COURT: All right. Any redirect, Mr. Morris?

3 MR. MORRIS: Just a few very questions, Your Honor.

4 Just a very few questions.

5 REDIRECT EXAMINATION

6 BY MR. MORRIS:

7 Q Mr. Seery, you were asked about that document that Lucy
8 prepared. Do you remember that?

9 A Yes, I do.

10 Q In your experience, don't defendants often deny liability
11 before entering into settlements, or even worse, getting
12 adverse judgments entered against them?

13 A Of course. Yes.

14 Q Okay. And in response to Mr. Draper's questions, isn't
15 the Guernsey claim another claim that the Debtor took into
16 account in assessing the potential risks of this settlement?

17 A There's a number of claims contained in it. As I
18 mentioned earlier, I mentioned the RICO claim. But there is a
19 Guernsey shadow director claim, which is not dissimilar to
20 U.S. claims that somebody effectively controls an enterprise,
21 notwithstanding them not having the official role.

22 Q Okay.

23 MR. MORRIS: I have nothing further, Your Honor.

24 THE COURT: All right. Any recross on that redirect?

25 All right.

1 MR. WILSON: No, Your Honor.

2 MR. DRAPER: No, Your Honor.

3 THE COURT: Thank you. Mr. Seery, that concludes
4 your testimony. Thank you.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: We need to take a bathroom break. Before
7 we do, I just want to be clear with what we have left. As I
8 understood it, we were having Mr. Pugatch from HarbourVest.
9 Mr. Morris, will that conclude the Debtor's evidence?
10 (Pause.) Okay. You were on mute, but I think you were saying
11 yes.

12 MR. MORRIS: Sorry. But to be clear, Debevoise is
13 going to be putting their witness on the stand.

14 THE COURT: Okay.

15 MR. MORRIS: But it's part of the evidence in support
16 of the motion.

17 THE COURT: All right. Do the Objectors have any
18 witnesses today?

19 MR. WILSON: Your Honor, Mr. Dondero intends to
20 examine Mr. Pugatch, but if he's going to be called by his
21 counsel, then we will do that as a cross-examination.

22 THE COURT: All right.

23 MR. DRAPER: This is Douglas Draper. I have no
24 witnesses.

25 THE COURT: Okay. All right. Well, I'm asking --

1 well, I do want to ask: Can we get a time estimate
2 potentially for Mr. Pugatch?

3 MS. WEISGERBER: For my examination, Your Honor,
4 twenty minutes, perhaps.

5 THE COURT: Okay.

6 MS. WEISGERBER: Or less.

7 THE COURT: All right. Well, let me tell you what
8 we're going to do. We're going to take a ten-minute bathroom
9 break. But I have a 1:30 hearing and I have a 2:00 o'clock.
10 Well, I have a 1:30 docket, multiple matters, and a 2:00
11 o'clock docket. So, you know, I'm really intending that we
12 get finished in time to give me and my staff a little bit of a
13 lunch break before launching into the 1:30 docket, so I'm
14 hopeful we can get done around 1:00-ish. If we can't, then
15 we're going to have to reconvene, I'm going to say probably
16 3:00-ish Central time. So let's hope we can get through
17 everything. All right? Ten-minute break.

18 THE CLERK: All rise.

19 (A recess ensued from 11:58 a.m. until 12:08 p.m.)

20 THE CLERK: All rise.

21 THE COURT: All right. Please be seated. We're
22 going back on the record in the Highland matters. Do we have
23 everyone? It looks like we do. Ms. Weisgerber is going to
24 call the next witness; is that correct?

25 MS. WEISGERBER: Yes, Your Honor. We call Michael

1 Pugatch of HarbourVest to the stand.

2 THE COURT: All right. Mr. Pugatch, if you could
3 turn on your video and say, "Testing one, two."

4 MR. PUGATCH: Two.

5 THE COURT: All right. There you are. Please raise
6 your right hand.

7 MICHAEL PUGATCH, HARBOURVEST'S WITNESS, SWORN

8 THE COURT: Thank you. You may proceed.

9 MS. WEISGERBER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. WEISGERBER:

12 Q Good morning. Can you please state your name for the
13 record?

14 A Sure. It's Michael Pugatch.

15 Q And where do you work, Mr. Pugatch?

16 A HarbourVest Partners.

17 Q And what is your title?

18 A I'm a managing director in our secondary investment
19 group.

20 Q Did HarbourVest file claims in the Highland bankruptcy,
21 Mr. Pugatch?

22 A We did, yes. Several claims, in fact.

23 Q What was the basis for those claims?

24 A Yeah. Among other things, fraudulent inducement based on
25 misrepresentations and omissions on the part of Highland in

1 connection with our original investment, mismanagement at the
2 HCLOF level, including inappropriate fees that were charged
3 to investors, among a number of other items as well.

4 Q Can you explain what you mean by misrepresentations made
5 to HarbourVest by Highland?

6 A Yeah, sure. So, you know, based on a number of
7 statements that were made to us around the litigation
8 involving Mr. Terry, some of the intentions found, the
9 structural changes that came to light with respect to HCLOF
10 and our investment, as well as the fact that the arbitration
11 award specifically against Mr. Terry would have no impact or
12 implication on Highland's sale or business.

13 Q And can you explain what you mean by omissions made by
14 Highland to HarbourVest?

15 A Sure. So I would say, really, the implications behind
16 the structural changes that were made at the time of our
17 investment into HCLOF. Also, the intention, clear intentions
18 that Highland had to never, in fact, pay the arbitration
19 award that came to light during our due diligence period to
20 Mr. -- to Mr. Terry as part of the investment. And
21 ultimately the -- what Highland went about doing in terms of
22 stripping assets of Acis that led to the material value
23 declines and destruction of value that we've experienced
24 since our investment.

25 Q You mentioned a diligence period. Did HarbourVest

1 conduct diligence on the investment?

2 A We did. We conducted very detailed due diligence, as we
3 do for all of our investments. That diligence period lasted
4 several months ahead of our investment decision.

5 Q And did HarbourVest conduct that diligence by itself?

6 A No. So, in addition to internal investment professionals
7 at HarbourVest, we engage with outside advisors, both
8 consultants as well as legal advisors, in connection with
9 that due diligence.

10 Q And did Highland answer all of HarbourVest's questions
11 during that diligence period?

12 A They did. And they were numerous. But yes, they
13 answered all the questions that we had for them.

14 Q Was the Terry dispute part of HarbourVest's diligence?

15 A It was. That came up as one of the outstanding items of
16 litigation as part of our due diligence.

17 Q I'm going to ask my colleague to pull up on the screen an
18 exhibit that was on our exhibit list as Items -- Exhibits 34
19 and 35. It's an August 15, 2017 email from Brad Eden to
20 Dustin Willard. Mr. Pugatch, do you recognize this document?

21 A I do, yes.

22 Q And what is it?

23 A This was an email sent to us during our due diligence
24 period in response to a request for more information on the
25 outstanding litigation that Highland was involved with.

1 MS. WEISGERBER: And if my colleague can just scroll
2 to the attachment to that email.

3 BY MS. WEISGERBER:

4 Q And do you recall the attachment as well, Mr. Pugatch?

5 A Yes, I do.

6 MS. WEISGERBER: And if you can scroll back up to the
7 first email.

8 BY MS. WEISGERBER:

9 Q Who is Dustin Willard?

10 A Yes. Dustin is a colleague of mine at HarbourVest who
11 worked closely with me on this investment.

12 Q And you said that this document was shared with
13 HarbourVest during the diligence period before the HCLOF
14 investment?

15 A It was, correct.

16 Q Is it typical during diligence to receive a description
17 of litigation such as this?

18 A It is. It's a question that we always ask. Certainly a
19 component of our diligence to understand any outstanding
20 litigation on the part of our counterparty or manager that
21 we're investing in.

22 MS. WEISGERBER: Your Honor, I'd move to offer this
23 exhibit into evidence.

24 THE COURT: Any objection?

25 MR. DRAPER: No objection, Your Honor.

1 MR. MORRIS: No objection from the Debtor, Your
2 Honor.

3 THE COURT: All right. What is the letter or number
4 for this exhibit?

5 MS. WEISGERBER: It's HarbourVest Exhibit 34.

6 THE COURT: All right. So HarbourVest Exhibit 34 is
7 admitted.

8 (HarbourVest's Exhibit 34 is received into evidence.)

9 THE COURT: And I need to be clear where it appears
10 on the docket. Can someone tell me?

11 MS. WEISGERBER: So, it's identified on our exhibit
12 list, not -- it's not attached to the exhibits. It is on the
13 docket. We were -- when we initially filed the exhibit list,
14 we were working out confidentiality issues. But it was
15 subsequently filed with our reply last night. It's at Docket
16 No. 1735 --

17 THE COURT: All right.

18 MS. WEISGERBER: -- at Pages A -- Pages A345 to A350.

19 THE COURT: All right. Very well. Thank you.

20 BY MS. WEISGERBER:

21 Q Mr. Pugatch, we'll just scroll down to the second page of
22 the attachment. Can you describe generally what the
23 litigation says regarding the Terry dispute?

24 A Yes. Generally speaking, this dispute was described as
25 an employee dispute, employment agreement dispute, with Mr.

1 Terry, who was a former employee of Highland involved in
2 their CLO business, and is described by Highland to us really
3 having to do with a series of false claims, in their opinion,
4 but having to do with a disgruntled former employee.

5 Q And did it strike you as an unusual or significant
6 dispute?

7 A No. I would say we often -- we'll see, you know, former
8 employees with, you know, claims against a former employer in
9 connection with wrongful termination. I wouldn't say it's
10 extremely common, but certainly not entirely out of the
11 ordinary. And based on the explanations that we'd received
12 from Highland, seemed to be more of an ordinary-course type
13 former employee litigation suit.

14 Q Based on what you now know about the Terry dispute, do
15 you believe that this was an adequate disclosure regarding
16 the dispute?

17 A I would say very clearly not, you know, based on the
18 facts that came to light subsequently, the various rulings in
19 connection with the Acis bankruptcy case. What was very
20 clearly not stated are the actual facts and implications of
21 the ongoing litigation with Mr. Terry.

22 MS. WEISGERBER: I'd ask my colleague to put up the
23 next exhibit. Okay. So, this is on a HarbourVest exhibit
24 list, which is Document No. 1723. It's Exhibit 36 on that.
25 Same issue with respect to initially not filed, but it is on

1 the docket at our response last evening at ECF No. 1735 at
2 Page A351.

3 THE COURT: Page what?

4 MS. WEISGERBER: A351.

5 THE COURT: A351. Thank you.

6 MS. WEISGERBER: You're welcome.

7 BY MS. WEISGERBER:

8 Q Mr. Pugatch, I just put up a November 29, 2017 email from
9 Hunter Covitz to Dustin Willard, Michael Pugatch, and Nick
10 Bellisario. Do you recall this document?

11 A I do, yes.

12 Q And what is this document?

13 A This was an email sent to us by Highland a couple weeks
14 after we closed on our investment on the (inaudible) in
15 response to a *Wall Street Journal* article that had come out
16 regarding Highland, a number of actions that they had taken,
17 and what Highland was articulating to us, a number of false
18 claims that had been made about Highland's prior actions, and
19 specifically trying to explain some of that and also share
20 with HarbourVest a letter that was being sent to the editor
21 of the *Wall Street Journal* highlighting, in their view, some
22 of the inaccuracies around the reporting.

23 Q And did you receive this document?

24 A We did, yes.

25 MS. WEISGERBER: I'd move to offer this, so

1 HarbourVest Exhibit 36, into evidence.

2 THE COURT: Any objections?

3 MR. WILSON: Your Honor, John Wilson. I would object
4 as to the relevance of this document.

5 THE COURT: All right. What's your response?

6 MS. WEISGERBER: Your Honor, it shows
7 misrepresentations that the witness will testify how it
8 relates back to prior representations prior to HarbourVest's
9 investment, as well as misrepresentations at that time.

10 THE COURT: Okay. I overrule the objection. I'm
11 going to admit it.

12 (HarbourVest's Exhibit 36 is received into evidence.)

13 BY MS. WEISGERBER:

14 Q Mr. Pugatch, can you describe generally -- we spoke about
15 this a little bit -- just what this communication from
16 Highland was conveying to HarbourVest at the time?

17 A Yes. Specifically, again, responding to this *Wall Street*
18 *Journal* article that had been published, trying to defend,
19 again, Highland's own views why there were inaccuracies in
20 the reporting. But importantly, from our perspective, trying
21 to reassure us as to the fact that, you know, these
22 accusations would have no bearing and any results from it
23 would have no bearing on their ongoing business or
24 partnership or the investment that we had made in HCLOF.

25 MS. WEISGERBER: And if you can scroll to the second

1 page.

2 BY MS. WEISGERBER:

3 Q We'll just look at the last paragraph of another email
4 from Mr. Covitz. Can you just read that first sentence of
5 the last paragraph?

6 A Sure. (reading) While the dispute has no impact on our
7 investment activities, as always, we welcome any questions
8 you may have.

9 Q Mr. Pugatch, was this email and the discussion regarding
10 the Terry dispute consistent with the representations made to
11 you prior to HarbourVest's investment into HCLOF?

12 A It was, yes. Both the message, the lack of any impact
13 that ultimately the dispute with Mr. Terry, the arbitration
14 award would have around Highland's ongoing CLO business, or
15 HCLOF specifically, was all, you know, very clear in this
16 document, but all consistent with the representations that
17 had been made to us leading up to our investment in the
18 middle of November 2017 as well.

19 Q Thank you.

20 MS. WEISGERBER: And you can take down the exhibit,
21 Emily. Thank you.

22 BY MS. WEISGERBER:

23 Q You mentioned, Mr. Pugatch, an arbitration award to Mr.
24 Terry. How did you learn about that arbitration award?

25 A That was initially disclosed to us by Highland as we were

1 in the late stages of our diligence and closing process on
2 the investment into HCLOF.

3 Q And generally, what did Highland tell you about the
4 arbitration award?

5 A We were aware of its existence. We were aware of the
6 quantum of the award, I think it was around an \$8 million
7 arbitration award in the favor of Mr. Terry, and that was
8 following the litigation around the wrongful termination and
9 employee dispute that Highland had described to us
10 previously.

11 Q Did you ask to see a copy of the arbitration award?

12 A No, we did not.

13 Q Why not?

14 A Ultimately, we -- you know, the explanations that
15 Highland had provided to us all seemed very reasonable. We
16 relied on their representations that this was, again, nothing
17 more than a dispute with a former disgruntled employee, in
18 their words, that had no bearing or, you know, would not have
19 any bearing on our investment in HCLOF or their ongoing CLO
20 business, which all very clearly was not the case, as
21 we've -- as we've learned over the last several years.

22 Q Following learning about the arbitration award, did
23 HarbourVest do other diligence?

24 A We did. So, in addition to asking questions related to
25 the arbitration award and any impact that it would have, we

1 also spent some time diligencing a couple of structural
2 changes that were proposed by Highland, and, in fact, ended
3 up delaying the closing of our investment by about two weeks
4 as we vetted some of those structural changes that Highland
5 had proposed. Vetted those both, you know, internally with
6 Highland directly and with external counsel in order to make
7 sure that those structural changes were in fact legally sound
8 in ultimately making our investment.

9 Q And were those changes proposed following the arbitration
10 award?

11 A They were, yes.

12 Q Did Highland tell you the reason for the structural
13 changes?

14 A Yeah. So, so some of this -- and specifically, this
15 involved a change of the portfolio manager at the HCLOF level
16 that was really in connection with a rebranding as Highland
17 was going through a rebuild of its CLO business and wanting
18 to align, from a brand perspective, their business on an
19 ongoing basis with the Highland brand as opposed to the Acis
20 brand. But more specifically, in the case of a late change
21 from a structured standpoint, the -- part of the intention
22 and the investment thesis of HCLOF was to pursue a reset, a
23 refinancing of all the underlying CLOs as they approached the
24 end of their investment period or came out of their
25 investment period.

1 And in connection with that, in light of the arbitration
2 award, Highland's view was that there may be difficulties in
3 the market in resetting certain of those Acis CLOs with the
4 Acis brand associated with them, given, again, the existence
5 of the arbitration award and concerns in the market around
6 the Acis brand reputation.

7 Q And what did they tell you was the market view of Acis,
8 or the Acis brand?

9 A Yeah. Their view or their concern was that the, you
10 know, because of the existence of that arbitration award, the
11 brand would be viewed as toxic.

12 Q Didn't this put you on notice that perhaps there was
13 something wrong with the structural changes?

14 A I mean, we -- I mean, short answer, no. We ultimately
15 asked questions, we diligenced the legal structure, but
16 relied on the representations that were made to us by
17 Highland around the rationale for the structural changes,
18 that these are all changes that were within a Highland-
19 managed vehicle or sat below the vehicle that we were
20 investing in, and so ultimately were in Highland's purview,
21 was the representations that we relied on.

22 Q And did HarbourVest alone do that diligence of the
23 structural changes?

24 A So, no. I mean, in connection with the diligence that we
25 did internally and with Highland directly, we engaged with

1 outside counsel who was working with us at the time to vet
2 those structural changes as well.

3 Q Did HarbourVest rely on Highland's representations
4 regarding the arbitration award and the structural changes in
5 making its investment in HCLOF?

6 A We did, absolutely.

7 Q If Highland had disclosed the nature of the structural
8 changes, of removing Acis as the portfolio manager and
9 related transfers, would HarbourVest have proceeded with its
10 investment?

11 A Definitively, no, we would not have.

12 Q Why not?

13 A I think the reality is if we had understood the intent,
14 you know, that Highland was ultimately undertaking here, we
15 would not have wanted to be any part of this, and certainly
16 getting dragged into all of this, the hassle, the value
17 destruction that we've seen on behalf of the investors and
18 the funds that we manage. And I would say, lastly, we just
19 full stop would not have done business with a firm who
20 engages with this type of behavior, had we actually known the
21 truth.

22 Q Mr. Pugatch, are you familiar with the bankruptcy that
23 followed of Acis?

24 A Yes.

25 Q And what was your -- or, did HarbourVest participate in

1 that bankruptcy?

2 A So, initially, no. Subsequently, we ended up getting
3 dragged into that on account of a number of misstatements by
4 Highland about the role that HarbourVest had played as part
5 of our investment into HCLOF and some of that structure and
6 the structural changes that I alluded to.

7 Q How did HarbourVest learn about those misstatements in
8 the bankruptcy about HarbourVest's role?

9 A So, ultimately, those came to light on -- you know, on
10 account of the ongoing proceedings within the Acis bankruptcy
11 process, and specifically brought to light to us by the Acis
12 trustee at the time, who decided to pursue, you know, further
13 diligence or discovery around the claims that Highland had
14 made around HarbourVest's involvement in those changes.

15 Q And what is your understanding of what the allegations
16 were that caused the Acis trustee to investigate HarbourVest?

17 A Sure. So, you know, our understanding was that Highland
18 had made statements, again, false statements that HarbourVest
19 had actually instructed some of those structural changes,
20 that we were the ones that had said that we would not do
21 business with Acis and had ordered some of the underlying
22 transfer of assets or, again, structural changes, that, you
23 know, very clearly I would say were not the case. Also, that
24 HarbourVest was -- was calling the shots as it relates to any
25 of the ongoing management or future resets of the CLOs.

1 Q Did HarbourVest instruct any of those structural changes
2 or transfers to occur?

3 A We did not. Absolutely not.

4 Q Why didn't HarbourVest itself appear in the Acis
5 bankruptcy and file a claim?

6 A Yeah. HarbourVest's role, again, in HCLOF, we were a
7 passive investor in a Highland-managed company. We had no
8 direct interaction with or relationship with Acis. There was
9 really no reason for us to be directly involved until we were
10 subsequently dragged into involvement on account of those
11 misstatements. And then at that point our focus really
12 pivoted to, you know, whether we needed to defend ourselves
13 against those accusations that had been made by Highland and
14 after a request for further information in discovery by the
15 Acis trustee.

16 Q Did HCLOF participate in the Acis bankruptcy?

17 A They did, yes.

18 Q Did HCLOF incur fees for participating in the Acis
19 bankruptcy?

20 A Yes. In fact, very meaningful fees, to the tune of well
21 in excess of \$15 million of legal fees, as we understand it,
22 that have been incurred, largely in connection with the
23 ongoing Acis bankruptcy and Highland's continued pursuit of
24 and in connection with the litigation with Mr. Terry, which
25 we firmly believe was entirely inappropriate that HCLOF and

1 ultimately investors in HCLOF bear those expenses, which were
2 not just expenses of HCLOF but of Highland and a number of
3 other Highland affiliates.

4 Q Do those expenses form a basis of separate claims filed
5 by HarbourVest against Highland?

6 A They do, yes. One of the multiple claims that we had
7 filed against Highland.

8 Q And a few more questions, just for the record, Mr.
9 Pugatch. How much did HarbourVest initially invest in HCLOF?

10 A Sure. So, our initial investment in November of 2017 was
11 right about \$73-1/2 million, I believe.

12 Q Did HarbourVest invest any additional money in HCLOF?

13 A We did. There was a subsequent capital call investment
14 of about \$5 million, bringing our total investment to just
15 under \$80 million in aggregate.

16 Q When HarbourVest initially made the investment, did it
17 anticipate making a profit on it?

18 A We did, yes.

19 Q How much did HarbourVest anticipate earning from the
20 investment?

21 A Yeah. So, our -- based on the original \$73-1/2 million
22 investment, we had expected a total return of about \$137
23 million on that -- on that investment.

24 Q What was that projection based on?

25 A So, that projection was based on materials that we had

1 received from Highland, their internal projection models on
2 the future performance of the underlying CLOs that we were
3 acquiring exposure to through our investment in HCLOF, and
4 was one of the inputs or formed the basis in connection with
5 our diligence that we ultimately ran different sensitivities
6 -- projections around and helped employ -- helped inform our
7 investment thesis.

8 Q Do you know the current value of HarbourVest's investment
9 in HCLOF?

10 A Yes. The current value is right around \$22-1/2 million.

11 Q So roughly how much has the investment itself decreased
12 from HarbourVest's initial investment?

13 A So, net of what was about \$4-1/2 million of distributions
14 that we received early on in the investment, we've lost, to
15 date, in excess of \$50 million on our original investment.

16 Q And just for -- to close out, Mr. Pugatch, knowing all
17 that you know, if HarbourVest had known that -- about the
18 nature of the transfers by Acis or Highland's intent with
19 respect to the arbitration award, would HarbourVest have made
20 this investment?

21 A No. The reality is, had we known the truth, or even had
22 a sense of the truth, the true intentions behind some of
23 those transfers and ultimately what would have happened, we
24 never would have made this investment, full stop.

25 Q Thank you, Mr. Pugatch.

1 THE COURT: All right. I didn't hear you, Ms.
2 Weisgerber. Do you pass the witness?

3 MS. WEISGERBER: Yes, I pass the witness.

4 THE COURT: All right. Thank you.

5 Mr. Morris, any examination from you?

6 MR. MORRIS: No, thank you, Your Honor.

7 THE COURT: All right.

8 (Interruption.)

9 THE COURT: All right. I'm not sure whose voice that
10 was, but please, again, mute your devices when you're not
11 talking.

12 Any cross-examination of Mr. Pugatch? I'll start with
13 you, Mr. Wilson.

14 MR. WILSON: Yes, Your Honor.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 BY MR. WILSON:

18 Q How are you -- I guess we're afternoon now. How are you
19 this afternoon, Mr. Pugatch?

20 A I'm doing well. Yourself?

21 Q I'm doing well as well. Do you recall that on Monday of
22 this week I took your deposition?

23 A Yes, I do.

24 Q And so you understand that my name is John Wilson and I
25 represent Jim Dondero, who has filed an objection to the 9019

1 motion filed by the Debtor?

2 I've got a few questions for you today. Has HarbourVest
3 been around for over 35 years?

4 A We have, yes.

5 Q And does HarbourVest have ten offices around the world?

6 A Correct, yes.

7 Q And does HarbourVest employ over 150 investment
8 professionals?

9 A Yes.

10 Q Does HarbourVest have over \$74 billion in assets under
11 management?

12 A Correct, yes.

13 Q And is HarbourVest's client base largely comprised of
14 institutional investors?

15 A Also correct.

16 Q And you would agree with me that HarbourVest is a
17 sophisticated investor, right?

18 A I would, yes.

19 Q How long have you worked for HarbourVest?

20 A I've been employed by HarbourVest for 17 years now.

21 Q And how long have you been a managing director?

22 A I've been a managing director for approximately six
23 years.

24 Q And you were, in fact, the managing director for the
25 investment that HarbourVest made in Highland CLO Funding,

1 Ltd., which has been referred to today as HCLOF, correct?

2 A I was, correct.

3 Q And HarbourVest, I think you just testified, invested
4 approximately \$73 million as its initial investment in HCLOF?

5 A Yes, correct.

6 Q And before HarbourVest made that investment, it had made
7 many investments of this type, correct?

8 A Yeah. We've made hundreds of investments into
9 partnerships over our history, correct.

10 Q So HarbourVest was well-experienced in evaluating and
11 deciding whether to invest in large investments, correct?

12 A It was, yes.

13 Q Now, in your -- and by your, I mean HarbourVest -- in the
14 response to the Debtor's omnibus objection, it says that by
15 summer 2017 HarbourVest was engaged in preliminary
16 discussions with Highland regarding the investment. Is that
17 a correct statement?

18 A Correct, yes.

19 Q And, in fact, those talks began in the second quarter of
20 2017, correct?

21 A Yes.

22 Q And so the investment closed ultimately on November 15th,
23 2017?

24 A Yes, that's correct.

25 Q So it's fair to say that HarbourVest considered and

1 evaluated this transaction for over six months before
2 investing its \$73 million, right?

3 A From the time of the initial conversations that we had
4 with Highland, yes.

5 Q And one of the reasons that it took over six months to
6 complete the investment is that HarbourVest performs due
7 diligence before it makes an investment, correct?

8 A Correct.

9 Q And when you're performing due diligence -- well, first
10 off, you would agree with me that that's a common practice
11 amongst sophisticated investors such as HarbourVest, correct?

12 A To perform due diligence?

13 Q Yes.

14 A Yes.

15 Q And describe -- describe what HarbourVest does in a
16 general sense when it performs its due diligence.

17 A Sure. So, we spend time with the manager -- in this
18 case, Highland -- certainly around the investment thesis, the
19 opportunity, receive materials around the underlying assets.
20 We take that and perform our own independent due diligence
21 around the value of those assets, perform due diligence on
22 the manager itself, the go-forward opportunity. In many
23 cases, and certainly in this case, engage with outside
24 advisors to assist with that due diligence. It's a very
25 robust and thorough process.

1 Q And by outside advisors, are you referring to the outside
2 counsel that you testified about earlier?

3 A Yes. Both outside counsel and outside consultants.

4 Q Okay. And so did you say that it's typical to engage
5 outside counsel when performing due diligence?

6 A Yes.

7 Q And which outside counsel did you retain with respect to
8 this due diligence?

9 A Debevoise and Plimpton as well as Milbank.

10 Q And during the course of HarbourVest's due diligence, did
11 it identify some items of concern?

12 A As with any investment, there are always items that are
13 identified that require further diligence, risks that are
14 identified that we look to mitigate through our due
15 diligence, et cetera.

16 Q And if Harbour -- I'm sorry, did you say something else?

17 A No.

18 Q You were finished? Okay. Now, if HarbourVest identifies
19 an item of concern, is it typical to request additional
20 information regarding those items of concern?

21 A It is, yes.

22 Q And so that actually happened with respect to the HCLOF
23 investment, correct?

24 A In certain cases, yes.

25 Q HarbourVest identified several litigation matters that it

1 had questions about, correct?

2 A Correct. As we would with any investment.

3 Q And it went back to Highland and asked them to explain
4 their position on those litigation matters?

5 A Correct.

6 Q And one of those litigation matters was the Joshua Terry
7 litigation, correct?

8 A Yes.

9 Q And at the time that HarbourVest was considering this
10 investment, beginning in the second quarter and continuing
11 through the summer, that Josh Terry litigation had not
12 resulted in an award or a final judgment, correct?

13 A Correct.

14 Q And I think we looked earlier at a document that your
15 counsel admitted as HarbourVest Exhibits 34 and 35. There
16 was an email from a HarbourVest -- or, I'm sorry, from a
17 Highland representative to a HarbourVest representative that
18 was discussing Highland's position on the litigation,
19 including the Terry litigation, correct?

20 A Are you referring to the document that we looked at
21 earlier?

22 Q I am. And I can put it on the screen if we need to.

23 A No. Right, I recall that, and yes, that's correct.

24 Q Okay. And just to be clear, that document, which stated
25 Highland's positions on the -- and summaries of the

1 litigation, was issued months before the arbitration award to
2 Josh Terry, correct?

3 A I don't remember the exact timing, but it was certainly
4 during our due diligence period and prior to the arbitration
5 award, yes.

6 Q Well, it seems to me that that email that you -- your
7 counsel admitted as an exhibit was issued in August of 2017.
8 Does that sound right to you?

9 A If that's what the email said, yes.

10 Q And if the Terry arbitration award came out in October,
11 then you would agree with me that that is several months
12 prior to the -- or at least two months prior to the
13 arbitration award?

14 A Yes.

15 Q And so when HarbourVest made requests of Highland to
16 provide information regarding its items of concern, Highland
17 complied with those requests, correct?

18 A It did, correct.

19 Q And was there ever a time when HarbourVest requested
20 Highland to provide information and that information was not
21 provided?

22 A Our requests for information, or at least, you know,
23 responses or color to a question, were always met either
24 with, you know, written or verbal communication back to us,
25 yeah.

1 Q And you would agree with me that, in fact, HarbourVest
2 delayed the closing of the investment by two weeks to
3 continue its due diligence, correct?

4 A Correct, related to the structural changes that were made
5 close to closing. That's right.

6 Q And after conducting that due diligence, HarbourVest
7 satisfied itself that the investment was sound?

8 A That the legal structure that had been put in place in
9 connection with those proposed changes by Highland was -- was
10 legally sound, yes, and on the back of, again, statements and
11 misrepresentations on the part of Highland around the nature
12 and potential impact to their ongoing CLO business and HCLOF.

13 MR. WILSON: Well, I'm going to object to the latter
14 part of your response as nonresponsive.

15 THE COURT: Sustained.

16 BY MR. WILSON:

17 Q Now, after you conducted the due diligence, HarbourVest
18 made the investment of \$73 million on November 15th, 2017,
19 correct?

20 A Correct.

21 Q And so I think you testified earlier that prior to that
22 investment HarbourVest had become aware that that Josh Terry
23 litigation had resulted in an arbitration award, correct?

24 A Yes.

25 Q But I think you've also testified that HarbourVest did

1 not request that Highland provide a copy of the arbitration
2 award, correct?

3 A That's correct.

4 Q And you further testified that you were represented by
5 outside counsel at the time, correct?

6 A Correct.

7 Q And as of Monday of this week, you had not reviewed that
8 arbitration award; is that correct?

9 A That's correct.

10 Q Have you reviewed that arbitration award since Monday of
11 this week?

12 A I have not.

13 Q But in any event, you testified that Highland told you
14 about the award?

15 A Yes.

16 Q And they told you the amount of the award?

17 A Yes.

18 Q And then they told you that the award had been converted
19 to a judgment?

20 A When you say the award had been converted to a judgment,
21 can you be more specific?

22 Q Well, I don't know how familiar you are with the
23 litigation process, but in this instance, that award was
24 taken to a court and the court entered a judgment on the
25 arbitration award. Did you -- were you aware of that?

1 A I don't recall the specific legal terms of judgment
2 against it. I was aware of the existence of the arbitration
3 award and the -- and the obligation for Highland to comply
4 with that arbitration award.

5 Q And HarbourVest did not make an appearance in the Acis
6 bankruptcy, right?

7 A We did not.

8 Q But you were aware of the Acis bankruptcy, correct?

9 A Yes.

10 Q And you were kept apprised of the Acis bankruptcy by
11 Highland individuals, correct?

12 A We had conversations with a couple of Highland
13 individuals throughout the Acis bankruptcy process, yes.

14 Q Right. And in fact, you testified that you participated
15 in regular conference calls with Highland regarding that
16 bankruptcy?

17 A That's correct, yes.

18 Q And do you recall having been provided with over 40,000
19 documents by Highland related to the Acis bankruptcy?

20 A I do not recall that, no.

21 Q Would those documents have been provided to your outside
22 counsel, had you received them?

23 A I don't know the answer to that.

24 Q Did the outside counsel that represented you in the due
25 diligence continue to represent you throughout the Acis

1 bankruptcy?

2 A They did. One of the counsels did, correct.

3 Q And which counsel was that?

4 A Debevoise.

5 Q So was your counsel actively involved with monitoring the
6 Acis bankruptcy?

7 A They were, yes, particularly after we were ultimately
8 accused of having something to do with the original structure
9 and -- as a result of misstatements by Highland.

10 Q Did your counsel attend hearings in the Acis bankruptcy?

11 A I don't recall.

12 Q Are you familiar with the PACER system?

13 A I am not.

14 Q Now, I think that HarbourVest has been described as a
15 passive investor. You recall that description of HarbourVest
16 in this instance?

17 A Yes.

18 Q But, in fact, HarbourVest invested substantial assets
19 such that it owned a 49.98 percent share of HCLOF. Would you
20 agree with that?

21 A That's correct.

22 Q And in fact, the next largest investor was CLO Holdco,
23 which owned 49.02 percent of the shares, correct?

24 A That sounds right.

25 Q And there was an advisory board that was created pursuant

1 to the formation documents of this investment, correct?

2 A That's correct.

3 Q And in fact, that advisory board only had two members,
4 and one was a representative of HarbourVest and one was a
5 representative of CLO Holdco, correct?

6 A Correct.

7 Q And the advisor -- I'm sorry, the portfolio manager was
8 not allowed to disregard the recommendations of the advisory
9 board, correct?

10 A With respect to the limited set of items that the
11 advisory board could opine on, that is correct.

12 Q All right. I want to go over a couple of the
13 misrepresentations that HarbourVest has identified in its
14 filings related to its claim. The first one is -- and just
15 for the record, I'm reading from Docket No. 1057 filed on
16 September 11, 2020, HarbourVest Response to Debtor's First
17 Omnibus Objection.

18 But the first misrepresentation identified in that
19 document says that Highland never informed HarbourVest that
20 Highland had no intention of paying the arbitration award.
21 And was -- was Highland obligated to pay the Josh Terry
22 arbitration award against Acis?

23 MR. MORRIS: Objection to the question to the extent
24 it calls for a legal conclusion.

25 THE COURT: Sustained.

1 MS. WEISGERBER: Join in that objection.

2 THE COURT: Sustained. I think --

3 BY MR. WILSON:

4 Q Your understanding was --

5 MR. WILSON: I'm sorry, Judge?

6 THE COURT: I sustained the objection as calling for
7 a legal conclusion. So, next question.

8 MR. WILSON: Yes, I -- I heard that. Thank you, Your
9 Honor.

10 BY MR. WILSON:

11 Q In your understanding, was Highland responsible for
12 paying the arbitration award to Josh Terry?

13 A My understanding is on the account of the fact that Acis
14 --

15 MS. WEISGERBER: Objection, Your Honor. Objection,
16 Your Honor, same basis.

17 THE COURT: Sustained. It was essentially the same
18 question.

19 MR. WILSON: Well, Your Honor, I didn't ask --

20 THE COURT: It was essentially the same question, Mr.
21 Wilson. Move on.

22 MR. WILSON: Okay.

23 BY MR. WILSON:

24 Q The next misrepresentation identified by HarbourVest said
25 that Highland did not inform HarbourVest that it undertook

1 the transfers to siphon assets away from Acis, LP and that
2 such transfers would prevent Mr. Terry from collecting on the
3 arbitration award. So the basis for that allegation would be
4 that Highland was siphoning assets from Acis to avoid having
5 Acis pay the arbitration award, correct?

6 A That -- that would be the implication, yes.

7 Q Okay. And then that misrepresentation continues on and
8 says that Highland represented to HarbourVest that it was
9 changing the portfolio manager because Acis was toxic. And
10 do you recall that representation being made to you?

11 A Yes, I do.

12 Q And would you agree with me that whether or not Acis is
13 toxic in the industry would be an opinion?

14 A I suppose it would be an opinion, but by the manager of
15 the vehicle responsible for managing the HCLOF investment and
16 the underlying CLOs. Yeah, we viewed the Acis name and the
17 Highland name as synonymous, if you will. I mean, Acis was a
18 subsidiary of Highland. For all intents and purposes, it was
19 the same from our perspective as we made the investment into
20 HCLOF.

21 Q So did HarbourVest have an independent understanding of
22 whether or not the Acis name was toxic in the industry?

23 A We did not, no. We relied on Highland's views of that as
24 manager of HCLOF.

25 MR. WILSON: Your Honor, just a brief housekeeping

1 item. Did you say that we need to be done at 1:00 o'clock?

2 THE COURT: Well, I said I really wanted you to be
3 done by 1:00 o'clock because I have a 1:30 docket and a 2:00
4 o'clock docket and I'd rather not have to hang up 70-
5 something people and reconnect them again at 3:00 o'clock.
6 How close are you to being finished?

7 MR. WILSON: Well, --

8 THE COURT: This is going at a very slow pace.

9 MR. WILSON: Well, I apologize for that, Your Honor.
10 I think I've got at least ten more minutes, but -- but I know
11 we also have closing remarks. And I was just going to ask if
12 Your Honor had a preference of --

13 THE COURT: Keep going.

14 MR. WILSON: -- of breaking now --

15 THE COURT: Keep -- let's --

16 MR. WILSON: -- or keep going? Okay.

17 THE COURT: Let's talk fast and try to get through.
18 You know, even if I'm sacrificing lunch today, I don't want
19 to inconvenience 75 people this way. So we'll just probably
20 start our 1:30 hearing a little late and inconvenience those
21 people.

22 All right. Go ahead.

23 MR. WILSON: All right. Thank you, Your Honor.

24 BY MR. WILSON:

25 Q Did Acis form its -- I can't recall if you answered this

1 question, but did Acis form its own opinion on whether or not
2 -- I'm sorry, strike that. Did HarbourVest form its own
3 opinion on whether or not the Acis name was toxic in the
4 industry?

5 MS. WEISGERBER: Objection, --

6 THE WITNESS: We did not. We didn't have a basis.

7 THE COURT: I'm sorry, did I have an objection?

8 BY MR. WILSON:

9 Q You did not --

10 THE COURT: Did I have an objection?

11 MS. WEISGERBER: Yeah. Objection. Yes. Objection,
12 asked and answered, Your Honor.

13 THE COURT: Overruled. He can answer.

14 BY MR. WILSON:

15 Q Okay. But --

16 A We did not.

17 Q Did Highland have the ability to investigate the Acis
18 name and make its own determination of whether that name was
19 toxic? I'm sorry, I think I'm misspeaking. HarbourVest.

20 A HarbourVest had the ability to do that, yes.

21 Q I apologize I misspoke. I meant HarbourVest. Did
22 HarbourVest have the ability to investigate that name and
23 determine if it was toxic?

24 A It was irrelevant to our investment thesis. And as I
25 said before, Acis was a subsidiary of Highland. We viewed

1 them as interchangeable in the context of our investment.

2 Q Okay. The next misrepresentation that you refer to says
3 that Highland indicated to HarbourVest that the dispute with
4 Mr. Terry would have no impact on its investment activities.
5 Would you agree with me that that is also an opinion?

6 A It was a statement that --

7 MS. WEISGERBER: Your Honor, I'm going to object to
8 the extent these questions are seeking a legal conclusion
9 regarding, you know, if something's an opinion or not.

10 THE COURT: Okay. Overruled. He can answer.

11 THE WITNESS: It was -- it was a statement that was
12 made to us by Highland and represented in multiple different
13 formats as fact. And a representation that we relied on in
14 connection with our investment.

15 BY MR. WILSON:

16 Q And finally, the misrepresentation, the last
17 misrepresentation identified, is that Highland expressed
18 confidence in the ability of HCLOF to reset or redeem the
19 CLOs. Would you agree with me that that statement is an
20 opinion?

21 A On the basis that it was the core investment thesis of
22 the -- of the investment of HCLOF. Again, whether that's
23 legally viewed as an opinion or a fact, it was -- it was
24 certainly the investment thesis that we made the investment
25 predicated upon.

1 Q And you just testified that you thought that Acis and
2 Highland were interchangeable from the perspective of the
3 investment opportunity, correct?

4 A Correct.

5 Q But you also accepted Highland's recommendation because
6 HarbourVest agreed that the change in the -- to a Highland
7 manager made commercial sense, correct?

8 A We took at face value what Highland recommended because
9 this all had to do with the structuring of an entity that
10 they fully managed with respect to multiple underlying
11 subsidiaries that weren't managed by Highland.

12 Q But would you agree that, at the time, you -- HarbourVest
13 thought that made commercial sense?

14 A It did not seem unreasonable to us based on the
15 explanation we were given.

16 Q Okay.

17 MR. WILSON: I want to refer to HarbourVest Exhibit
18 39.

19 (Pause.)

20 THE COURT: What are we waiting on? What are we
21 waiting on?

22 MR. WILSON: I'm trying to get the document on the
23 screen, Your Honor.

24 (Pause.)

25 THE COURT: We can't hear you. We can't hear you.

1 MR. WILSON: I'm sorry. I'm sorry, Your Honor. I'm
2 speaking with my --

3 THE COURT: Okay.

4 MR. WILSON: -- co-counsel here.

5 THE COURT: All right.

6 (Pause.)

7 MS. WEISGERBER: Mr. Wilson, is it 39 or 38 that
8 you're referring to?

9 MR. WILSON: 39. HarbourVest 9019 motion on the
10 main -- on the Dondero file. And then there's the -- it's --
11 it's John -- and then there's the HarbourVest, and then the
12 exhibits are all in one file.

13 MS. WEISGERBER: Mr. Wilson, I'll just note that 39
14 was subject to confidentiality based on HCLOF's request.
15 HCLOF's counsel is present. I think they know it's an
16 excerpt. But I'd just -- that for HCLOF's counsel.

17 MR. WILSON: Well, is there an objection to showing
18 this document on the screen? Yes. All right. We're not
19 going to put Document 39 on the screen.

20 A VOICE: Yes.

21 MR. WILSON: All right. Scroll down to the next
22 page.

23 BY MR. WILSON:

24 Q This is a -- this is a document that was produced to us
25 this week, the Highland production. It appears to be a

1 Highland CLO Funding, Ltd. Statement of Operations for the
2 Year Ended 31 December 2017. Do you see at the top of that --
3 at the top of that document where it says total investment
4 income of \$26 million?

5 A I do, yes.

6 Q And total expenses were roughly \$1.8 million?

7 A Yes.

8 Q And then net change and unrealized depreciation on
9 investments and net realized loss on investments was \$4.26
10 million cumulative, resulting in a net increase in net assets
11 resulting from operations of \$20.224 million. Do you agree
12 with that?

13 A Yes.

14 Q Okay.

15 MR. WILSON: Go to the next one.

16 BY MR. WILSON:

17 Q And you understand that, in the course of the Acis
18 bankruptcy, the portfolio managers for certain of the CLOs
19 were changed by the Trustee, correct?

20 A Yes, around the underlying CLOs. That's -- that's my
21 understanding, yes.

22 Q And, in fact, Mr. Seery testified earlier today that that
23 occurred in the summer of 2018, correct?

24 MR. WILSON: Scroll.

25 THE WITNESS: I don't recall the timing, but that's

1 what he testified to.

2 BY MR. WILSON:

3 Q Well, this document is HarbourVest Exhibit 40, and this is
4 the statement of operations for the financial year ended 31
5 December 2018. Here, the total investment income is only
6 \$11.1 million. Do you see that?

7 A I do.

8 Q And do you see where the expenses have increased to \$13.6
9 million?

10 A I do, yes.

11 MR. WILSON: Okay. Scroll down some more.

12 BY MR. WILSON:

13 Q And do you see where it says net change and unrealized
14 loss on investments of \$48.47 million?

15 A Yes.

16 Q And so after Acis and Brigade took over the managements of
17 these CLOs, we had a net decrease in net assets resulting from
18 operations of \$52.483 million in the year 2018, correct?

19 MS. WEISGERBER: Objection, Your Honor. Assumes a
20 fact not in evidence.

21 THE COURT: Overruled. He --

22 MR. WILSON: Your Honor, --

23 THE COURT: We're just looking at this statement and
24 testifying about it says, so I overrule the objection.

25 MR. WILSON: Thank you, Your Honor. Thank you, Your

1 Honor. I'm now going to turn to HarbourVest Exhibit 41. All
2 right. I'll --

3 BY MR. WILSON:

4 Q Did you answer the question, Mr. Pugatch?

5 A No, I -- I would agree with the second part of your
6 statement that for the year 2018 the -- the loss was \$52
7 million. I don't -- I don't believe that jives with the first
8 part of your statement that that was after Acis and Brigade
9 took over. As I understand, that was in the middle of the
10 year.

11 Q But in any event, Acis and Brigade had been managing this
12 for at least six months of 2018 when that loss occurred,
13 correct?

14 A They had been managing a portion of the underlying CLO
15 portfolio held by Highland CLO Funding.

16 Q All right. We're now looking at Exhibit #41, which is the
17 Draft Unaudited Statement of Comprehensive Income, 31 December
18 2019. Total income has now dropped to \$4.664 million.

19 MR. WILSON: And scroll down.

20 BY MR. WILSON:

21 Q Expenditures are at \$3.645 million. And then it says
22 investment gains and losses net out to \$11.493 million, a
23 negative \$11.493 million. And --

24 MR. WILSON: Scroll down to the --

25 BY MR. WILSON:

1 Q And so would you agree with me that in the year 2019,
2 HCLOF showed a net loss of \$10.476 million?

3 A Yes, that's what the financial statements say.

4 Q And in this year, the Acis CLOs were solely managed by
5 Acis and Brigade, correct?

6 A The Acis CLOs were. Yes, correct.

7 Q All right.

8 MR. WILSON: Now, go to 42.

9 BY MR. WILSON:

10 Q Now, this is HarbourVest #42.

11 MR. WILSON: Go down to the next page.

12 BY MR. WILSON:

13 Q And this is the Highland CLO Funding, Ltd. Unaudited
14 Condensed Statement of Operations for the Financial Period
15 Ended 30 June 2020. And so this is just half a year of
16 operations. And would you -- and this actually has a
17 comparison between 2019 and 2020. But do you see where it
18 says investment income has dropped from a million dollars in
19 the first half of 2019 to \$381,000 in the first half of 2020?

20 A Yes.

21 MR. WILSON: Okay. Scroll down.

22 BY MR. WILSON:

23 Q And do you see where, in the first half of 2019, total
24 expenses were \$1.85 million, and then in the first half of
25 2020 total expenses were \$2.16 million? Do you see that?

1 A I do.

2 Q And if you go down below that, where it says Net Realized
3 and Unrealized Gain/Loss on Investments, the first half of
4 2019 HCLOF lost \$12 million, and in the first half of 2020 it
5 lost \$39.472 million?

6 MR. MORRIS: Your Honor, I'm going to object. It's
7 John Morris for the Debtor. I'm happy to stipulate. In fact,
8 he can offer this document into evidence. There's no
9 foundation that Mr. Pugatch has any particularized knowledge
10 about any of the numbers behind this. All he's asking him to
11 do is to confirm what the document says. It says what it
12 says. But this -- I'll object on that basis, Your Honor.

13 THE COURT: All right. Mr. Wilson, what about it?
14 You're just getting him to read numbers off of these exhibits.

15 MR. WILSON: Well, --

16 THE COURT: Shall we just --

17 MR. WILSON: -- I understood --

18 THE COURT: -- by stipulation get them into evidence?

19 MR. WILSON: Well, --

20 MR. MORRIS: No objection, Your Honor.

21 MS. WEISGERBER: No objection.

22 THE COURT: All right. So these are exhibits what?
23 We've gone through 39, 41, and I don't know what else. 40,
24 maybe?

25 MR. WILSON: It was Exhibits 39, 40, 41, and 42 that

1 were on the HarbourVest exhibit list.

2 THE COURT: All right. Those will be admitted, and
3 we've already discussed what docket entry number they appear
4 at.

5 (HarbourVest's Exhibits 39 through 42 are received into
6 evidence.)

7 THE COURT: All right. Anything else? You told me
8 you had 10 more minutes about 15 minutes ago.

9 MR. WILSON: Well, I'm sorry if I -- I think I had
10 said I had at least ten more minutes, and I was looking at the
11 -- it was 10:50 [sic] and you wanted to quit at 1:00. So I do
12 have longer than that. I'm sorry, Your Honor.

13 THE COURT: Well, --

14 MR. WILSON: But --

15 THE COURT: -- I feel like I'm being --

16 MR. WILSON: -- I'll try to proffer --

17 THE COURT: Okay, Mr. Wilson, let me just tell you
18 something. I feel like I'm being disrespected now, and the
19 parties are. We really need to pick up the pace. I've told
20 you I've got a 1:30 docket -- with four or five matters on it,
21 by the way. I've got a 2:00 o'clock docket. I'm starting
22 them late. No one advised my courtroom deputy that we were
23 going to need all day today for this, okay? So you've got
24 five more minutes to wrap it up, and then, of course, I have
25 to go to Mr. Draper and see if he has cross. All right? So

1 please don't test my patience any more. Five minutes to
2 finish.

3 MR. DRAPER: Judge, I have no questions.

4 THE COURT: I didn't hear you, Mr. Draper. What did
5 you say?

6 MR. DRAPER: I have no questions.

7 THE COURT: All right. Very good.

8 MR. WILSON: I apologize, Your Honor. I was actually
9 trying to be respectful of your time when I informed you that
10 I had at least ten more minutes left at 12:50, but I will try
11 to be as expedient as I can as I finish up.

12 BY MR. WILSON:

13 Q And I don't see you on my screen.

14 MR. WILSON: You can take that document down.

15 THE WITNESS: Here.

16 BY MR. WILSON:

17 Q Mr. Pugatch, do you have an opinion as to what caused
18 these incredible losses of value at HCLOF?

19 MS. WEISGERBER: Objection to the extent it calls for
20 a legal conclusion.

21 THE COURT: Overruled. He can answer.

22 THE WITNESS: I would say that there's no one cause
23 for the decline in value. I can point to a number of
24 different things, including the exorbitant fees that were
25 charged to HCLOF, including the inability to be able to re --

1 refinance the CLOs on the part of HCLOF, all of which stems
2 from the actions that Highland took prior to our investment in
3 HCLOF.

4 BY MR. WILSON:

5 Q And you've -- I think it's been referenced several times
6 in HarbourVest's arguments that -- that the reset was a
7 fundamental -- the inability to get a reset was a fundamental
8 cause of the loss in value. Is that -- is that HarbourVest's
9 position?

10 A That -- that is a part of the -- the cause in the
11 declining value of the CLOs, yes.

12 Q And you would agree with me that a reset is fundamentally
13 a reset of interest rates, correct?

14 A Of the interest rates of the liabilities of the -- the
15 timing for repayment of those liabilities, yes.

16 Q Now, just say with -- for the sake of a hypothetical
17 example. If you had a home that was valued at \$5 million, or
18 let's just say \$500,000, let's make it more realistic. If you
19 had a \$500,000 home and you had a mortgage on that home at
20 five percent interest, your inability to refinance that home
21 at a lower interest rate would not affect the underlying value
22 of that home, correct?

23 MS. WEISGERBER: Objection, Your Honor. Hypothetical.
24 And objection to relevance as well.

25 THE COURT: Sustained.

1 MS. WEISGERBER: Calls for speculation.

2 THE COURT: Sustained.

3 BY MR. WILSON:

4 Q Is there any reason to believe that the change in the
5 interest rate would have prevented the massive losses of
6 investment value that occurred in HCLOF?

7 MS. WEISGERBER: Object on the same grounds.

8 THE COURT: Sustained.

9 THE WITNESS: The short -- the short answer is yes,
10 with a -- with the amount of leverage --

11 MS. WEISGERBER: I --

12 THE WITNESS: -- that exists. Oh, sorry.

13 MS. WEISGERBER: The objection was sustained.

14 THE COURT: Yeah, I sustained the objection. That
15 means you don't answer.

16 THE WITNESS: I'm sorry, Your Honor.

17 BY MR. WILSON:

18 Q So, would you agree with me that if the expenses and the
19 fees charged by the portfolio manager increased dramatically,
20 that would -- that would impact the value of the investment,
21 correct?

22 MS. WEISGERBER: Objection on the same grounds, and
23 relevance. This is a 9019 hearing, Your Honor. We are not
24 here to try every minutia. And in fact, we're trying to avoid
25 a trial on the merits. And it feels like we're getting a bit

1 far afield now.

2 THE COURT: I sustain.

3 MR. WILSON: All right. I'll pass the witness.

4 THE COURT: All right. Mr. Draper said he had no
5 cross. So, any redirect, Ms. Weisgerber?

6 MS. WEISGERBER: No, Your Honor.

7 THE COURT: All right. Mr. Morris, did you have any
8 redirect?

9 MR. MORRIS: I do not, Your Honor. I have a very
10 brief closing and then some additional remarks if -- if we
11 finish.

12 THE COURT: All right. So, Mr. Pugatch, that
13 concludes your testimony. Thank you. You're excused if you
14 want to be.

15 All right. So, as I understood it, there would be no more
16 evidence after this.

17 MR. WILSON: Well, Your Honor, along those lines, as
18 a housekeeping measure, I think everything on my exhibit list
19 is included on someone else's exhibit list, but just for belt
20 and suspenders I would move to admit all of the exhibits on
21 the -- on Mr. Dondero's exhibit list.

22 THE COURT: Well, is that agreed or not? Because we
23 didn't have a witness to get them in.

24 MR. MORRIS: No objection, Your Honor.

25 THE COURT: Any objection? All right. If there's no

1 objection, I'll --

2 MR. MORRIS: Your Honor, --

3 THE COURT: I'm sorry. Was there an objection? I
4 will admit Dondero Exhibits A through M, and those appear at
5 Docket Entry 1721, correct, Mr. Wilson?

6 MR. WILSON: That is correct, Your Honor.

7 THE COURT: All right.

8 MR. WILSON: That is correct, Your Honor.

9 (James Dondero's Exhibits A through M are received into
10 evidence.)

11 MR. WILSON: And one final matter is, during the
12 examination of Mr. Seery, you at least partially admitted
13 Dondero's Exhibit N, and I was wondering if we need to -- how
14 we'd need to submit that for the record.

15 THE COURT: Okay. First, I'm confused. I think you
16 said Mr. Terry's testimony. You --

17 MR. WILSON: I said Seery. I'm sorry.

18 THE COURT: Oh, Seery?

19 MR. WILSON: Or I may have said Terry, but I meant to
20 say Seery.

21 THE COURT: Okay. Maybe you said it. Okay. During
22 Mr. Seery's testimony -- oh, the email that I admitted a
23 portion of?

24 MR. WILSON: That is -- that's correct, Your Honor.

25 THE COURT: What -- what are you asking? It's not in

1 your notebook. Are you asking do you need to separately
2 submit it or what?

3 MR. WILSON: Yeah, I was just asking what the Court's
4 preference on how we submit that for the -- put it in the
5 record.

6 THE COURT: Okay. That was so garbled I didn't hear
7 you. You need to file that on the docket as a supplemental
8 exhibit that was admitted, okay?

9 MR. WILSON: Okay. Thank you, Your Honor.

10 THE COURT: All right. Closing arguments? Mr.
11 Morris?

12 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

13 MR. MORRIS: Yes, very briefly, Your Honor. The
14 Debtor easily meets the standard here. The settlement
15 consideration relative to the claim establishes and reflects
16 the likelihood of success on the merits.

17 You know, I've never -- I did hear Mr. Pugatch in the
18 deposition the other day, but I otherwise haven't heard from
19 him. I found him to be incredibly credible, Your Honor, and I
20 regret the fact that he and HarbourVest are being blamed twice
21 here. The fact that they got 40,000 documents or didn't read
22 the arbitration award, it's just -- it's a shame that they're
23 being dragged through this yet again.

24 The fact is, Your Honor, there is no evidence that they
25 made the disclosures that HarbourVest claims -- complains

1 about. They just don't. The fraudulent transfers led to the
2 bankruptcy, led to the appointment of a trustee, led to --
3 right? So, so it's -- that's why -- but they're getting
4 something for their claim.

5 It was a hard negotiation, Your Honor. There is no
6 dispute that if we litigated this it would be complex. It
7 would fact-intensive. The Debtor would be forced to rely upon
8 witnesses who are no longer employed by it. That it would be
9 expensive, for sure. There's no dispute about any of that.
10 There's no dispute that the creditor body has spoken loudly
11 here by unanimously refraining from objecting except for Mr.
12 Dondero and the entities controlled by him.

13 And you heard Mr. Seery's testimony. I think he
14 exhaustively informed the Court as to the process by which the
15 transaction was analyzed and negotiated, and there's no
16 evidence to the contrary that this was an arm's-length
17 negotiation.

18 Unless Your Honor has any questions, we would request that
19 the motion be granted.

20 THE COURT: Thank you. Ms. Weisgerber, your closing
21 argument?

22 CLOSING ARGUMENT ON BEHALF OF HARBOURVEST

23 MS. WEISGERBER: Sure. Thank you, Your Honor. I'll
24 also be brief. We again join in Mr. Morris's arguments and
25 comments.

1 The Court has now heard testimony from Mr. Pugatch
2 regarding the factual detail underlying HarbourVest's claims.
3 The Court has also heard about the significant damages that
4 HarbourVest stands to recover for those claims. And
5 HarbourVest came to this Court ready to litigate. It would --
6 it's ready to do so if needed. It believes it would prevail
7 on its claims if it had to do so.

8 But the Court also heard from Mr. Seery about his
9 understanding of HarbourVest's claims, his calculus, and his
10 decision to settle them. And we submit that nothing further
11 is needed by this Court in order to approve the settlement.
12 This is a question of the Debtor's business judgment. We're
13 not here to have a trial on the merits of HarbourVest's
14 claims. The Objectors have made various arguments, including
15 about the cause of HarbourVest's damages. But even the nature
16 of the legal claims that HarbourVest is asserting, some do not
17 require a loss causation. So we submit that's not even
18 relevant to the merits of the claims.

19 The settlement is clearly in the best interest of the
20 estate, and we respectfully request that the Court approve it.

21 THE COURT: Thank you. All right. Mr. Wilson, your
22 closing argument?

23 MR. LYNN: Michael Lynn. I will give the closing
24 argument, if that's satisfactory to the Court.

25 THE COURT: All right. Go ahead.

1 CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

2 MR. LYNN: Good afternoon, Your Honor. I just want
3 to make a few points, and I'll try to do it as quickly as
4 possible.

5 First, I feel compelled to address the argument of the
6 Debtor that Mr. Dondero is repeating his litigious behavior
7 from the Acis case. I don't know about the Acis case. I
8 wasn't involved except very, very peripherally. But with
9 respect to this case, we have only taken positions in court
10 that we believed -- that is, his lawyers -- believed were
11 warranted by law, facts as we knew them, and that are
12 consistent with professionalism. I'd be glad to explain any
13 position we took.

14 Often, through the Debtor's very persuasive powers, we
15 never had the chance to explain our position previously to the
16 Court. In fact, for the most part, as today, we have been
17 reactive rather than commencing proceedings. In fact, during
18 the first seven months of this case, we only appeared in court
19 a few times, when we felt we had to -- for example, when
20 discovery was being sought by the Creditors' Committee that we
21 feared might invade privilege. Then, much to the Debtor's
22 fury, we opposed the Acis 9019. We did so because we thought
23 it was too much.

24 Since, as the Court can see, the principal instigators of
25 litigation have been the Debtor, and to a lesser extent, the

1 Committee.

2 Indeed, in an apparent effort to drown Mr. Dondero and his
3 counsel in litigation, the Debtor has repeatedly sought court
4 action on a very short fuse, claiming need for expedited
5 hearing.

6 Perhaps the most startling example of this is the recent
7 contempt motion, for which there is no good reason for a quick
8 hearing. Resolution of that motion is not necessary to reach
9 the confirmation hearing. The motion could be heard after the
10 confirmation hearing. There is no need to put Mr. Dondero and
11 his professionals in a position where they have to respond in
12 a couple of days, two business days, and then will have two
13 days to prepare for trial.

14 Second, Your Honor, Mr. Seery has repeatedly asserted,
15 contrary to today's motion, that the HarbourVest claim was of
16 no merit. That is why, when he came in to settle for tens of
17 millions of dollars, we opposed this motion. It appears that
18 the motion is occurring without any cross-party discovery.
19 There is no consideration, apparently, of trying dispositive
20 -- dispositive motions first. There is no consideration for
21 junior classes of equity, which Mr. Seery has previously
22 opined were in the money. This, even though there's no reason
23 that this settlement is necessary pre-confirmation, unless Mr.
24 Seery wants HarbourVest's vote.

25 Third, for whatever reason, that seems to be the driving

1 factor for settling. On its face, the vote seems to be a key
2 factor of the settlement. About the longest provision of the
3 settlement agreement relates to voting. The motion itself --
4 in the motion itself, five of seven bullet points cited by the
5 Debtor for approval of the settlement deal with and emphasize
6 support of the plan or the vote that is to be cast for the
7 plan.

8 If the settlement is a good deal, it didn't need to have
9 as one of its parts the requirement that HarbourVest vote for
10 the plan.

11 Your Honor, I'll stop there. I know Your Honor would like
12 to get just a few minutes before your 1:30 docket. I've been
13 there and I understand that, and I do apologize for taking the
14 time we have, but I think that responsibility is shared with
15 the Debtor and HarbourVest.

16 Thank you, Your Honor.

17 THE COURT: All right. Thank you for that.

18 Mr. Draper, any closing argument from you?

19 CLOSING ARGUMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

20 MR. DRAPER: Yes, I have three comments. The first
21 is the claim -- the loss claim, absent the fraud claim, is, at
22 best, \$7 million. I think Mr. Seery's argument that a hundred
23 -- one hundred percent is attributable to there is just wrong.
24 If he and I both invested in a company 50-50 and it goes
25 broke, we only lost 50 cents each.

1 Number two, I think the Court heard the evidence. I think
2 this is, at best, a subordinated claim under 5 -- under the
3 Bankruptcy Code. It's really a "But for the
4 misrepresentations, we wouldn't have invested."

5 And the last one is the -- Judge Lynn represented the
6 voting, so I won't deal with that. But the one that troubles
7 me the most is the fact that this asset that is ultimately
8 being paid for in claim dollars that's being transferred over
9 to the Debtor and being put it outside the estate, outside the
10 purview of this Court, and placed in some subsidiary, this --
11 this transaction, if it is approved, must -- should contain a
12 provision that the asset that's being acquired come into the
13 Debtor and be owned by the Debtor.

14 THE COURT: All right.

15 MR. DRAPER: I have nothing further, Your Honor.

16 THE COURT: Thank you, Mr. Draper.

17 Mr. Morris, you get the last word since it's your motion.

18 MR. MORRIS: Very quickly, Your Honor. The
19 subordination argument doesn't hold water. This is not a
20 claim against the Debtor for the security; it's a claim for
21 fraud. Okay? So, so 510(b), if it was a claim against HCLOF,
22 that might make sense, but this is a claim against the Debtor.
23 And it's a Debtor -- it's a claim for fraud. That's number
24 one.

25 Number two, we need to keep this exactly as it's been

1 structured in order to avoid litigation. Mr. Seery told the
2 Court. I'm sure the Court can make its own assessment as to
3 Mr. Seery's credibility as to whether or not the Debtor is
4 intending to somehow get this asset beyond the Court.

5 But there are reasons why we've done this, Your Honor.
6 They could have made an objection on that basis. In fact, if
7 they did, it would be overruled, because there's no -- there's
8 no basis for this Court to find that somehow the Debtor and
9 Mr. Seery are doing something untoward to get assets away from
10 this Court's jurisdiction.

11 You know, I don't know what to say about Mr. Lynn's
12 commentary. Much of it had nothing to do with any evidence in
13 the record.

14 The fact remains, Your Honor, that this settlement is
15 fair. It's reasonable. It's in the best interest of the
16 estate. And we would respectfully request that the Court
17 grant the motion.

18 THE COURT: All right. Thank you. Well, I
19 appreciate all the arguments and evidence I have heard today.
20 I'm going to be brief in my ruling here, but I reserve the
21 right to supplement in a more fulsome written order, which I'm
22 going to instruct Mr. Morris to submit. I am approving the
23 motion to compromise the HarbourVest claim today, and I guess
24 subsumed in that is granting the motion to allow their claim
25 for 3018 voting purposes.

1 I in all ways find this compromise to meet the required
2 legal standard set forth in such cases as *TMT Trailer Ferry*,
3 *AWECO*, and *Foster Mortgage*, numerous other Fifth Circuit
4 cases.

5 First, I'm going to specifically say for the record that I
6 found both witnesses today, Mr. Seery and Mr. Pugatch, to be
7 very credible. Very credible testimony and meaningful
8 testimony was provided to the Court today. And based on that
9 testimony, I find, first, that this compromise was the product
10 of arm's-length negotiations. It was a hard-fought
11 negotiation, as far as I'm concerned. The Debtor objected to
12 these numerous HarbourVest proofs of claim. The Debtor did
13 not want to allow HarbourVest a significant claim for voting
14 purposes. I duly note the statements made in the disclosure
15 statement before this compromise was reached suggesting, you
16 know, the Debtor didn't think HarbourVest should have a large
17 claim.

18 That is consistent with everything I typically see in a
19 bankruptcy case when there's a claim objection. The objector
20 vehemently denies the claimant should have a proof of claim,
21 and then people sit down and think about the risks and rewards
22 of litigating things. And I believe very fervently that's
23 what happened here. There were good-faith, arm's-length
24 negotiations that resulted in this proposed compromise.

25 I find the compromise -- and I'll add to that point, on

1 the good-faith point, I find nothing sinister or improper
2 about the fact that the compromise includes a commitment of
3 HarbourVest to vote in favor of the plan. Again, we see this
4 a lot. You know, there's even a buzz word that doesn't even
5 exist in the Bankruptcy Code: "plan support agreement." You
6 know, we see those a lot -- you know, oftentimes negotiated
7 before the case, but sometimes after. You know, it may be
8 improper in certain situations, but there was nothing here
9 that troubles me about that component of the compromise.

10 I find the compromise to meet the paramount interest of
11 creditors here. Notably, we have very large creditors in this
12 case who have not objected. The *Foster Mortgage* case from the
13 Fifth Circuit tells me I am supposed to consider support or
14 opposition of creditors. No opposition of UBS. No opposition
15 of the Redeemer Committee Crusader Fund. No opposition from
16 Josh Terry or Acis. No opposition from Daugherty.

17 But moreover, when considering the paramount interest of
18 creditors, I find this compromise to be in all ways fair and
19 equitable and in the best interest of the estate, and
20 certainly within the range of reasonableness. The evidence
21 showed that HarbourVest asserted over \$300 million. Over \$300
22 million. Granted, that was based on all kinds of legal
23 theories that would be contested and expensive to litigate,
24 but the evidence also showed that they invested over \$70
25 million. You know, close to \$75 million. I forget the exact

1 number. \$75 or \$80 million, somewhere in that range. And now
2 the credible evidence is that investment is worth about \$22
3 million.

4 So, certainly, while the claim may not have, at the
5 ultimate end of the day in litigation, resulted in a \$300
6 million proof of claim, certainly, certainly there were strong
7 arguments for a very sizeable claim, more than this compromise
8 amount. So it's certainly fair and equitable and reasonable
9 when considering the complexity and duration of further
10 litigation, the risks and rewards, the expense, delay, and
11 likely success.

12 A couple of last things I'm going to say are these. I
13 understand, you know, there is vehement disagreement on the
14 part of our Objectors to the notion that Highland might have
15 caused a \$50 million loss to HarbourVest. But I will tell
16 you, for what it's worth -- I want the record clear that this
17 is part of my evaluation of the reasonableness of the
18 settlement -- my reaction is that, indeed, Highland's
19 litigation strategy in the Acis case caused HCLOF to lose a
20 huge portion of its value, to the detriment of HarbourVest.
21 You know, whether all evidence at the end of the day would
22 convince me of that, I don't know, but that's -- that is
23 definitely this judge's impression.

24 I'm very sympathetic to HarbourVest. It appears in all
25 ways from the record, not just the record before me today, but

1 the record in the Acis case that I presided over, that
2 Highland back then would have rather spent HarbourVest's
3 investment for HCLOF legal fees than let Josh Terry get paid
4 on his judgment. They were perfectly happy to direct the
5 spending of other people's money, is what the record suggested
6 to me.

7 And then, you know, I have alluded to this very recently,
8 as recently as last Friday: I can still remember Mr.
9 Ellington sitting on the witness stand over here to my left
10 and telling the Court, telling the parties under oath, that
11 HarbourVest -- he didn't use its name back then, okay? For
12 the first phase of the Acis case, or most of the Acis case, we
13 were told it was an investor from Boston. And at some point
14 someone even said their name begins with H. I mean, it seemed
15 almost humorous. But Mr. Ellington said it was they,
16 HarbourVest, the undisclosed investor, who was insistent that
17 the Acis name was toxic, and so that's what all of this had
18 been about: the rebranding, the wanting to extract or move
19 things away from Acis.

20 So, you know, I have heard for the -- well, at least the
21 second time today, from Mr. Pugatch, what I perceive to be
22 very credible testimony that that's just not the way it
23 happened.

24 And I guess the last thing I want to say here today, and
25 you know, I guess I have multiple reasons for saying this, not

1 just in connection with approving the settlement, you know,
2 I've heard about how the Acis CLOs, the HCLOF CLOs have lost,
3 you know, a crazy amount of value, that they underperform in
4 the market, that, you know, during the Acis/Brigade tenure
5 and, you know, they should have been reset. You know, I hope
6 those who have not been around as long as some of us in this
7 whole saga know that the -- Mr. Terry, Mr. Phelan, I think
8 Brigade, they all desperately wanted to reset these things,
9 but it was HCLOF, I believe directed by Highland, that wanted
10 to redeem, wanted to liquidate, take the pot of money,
11 warehouse it, and then do their own thing.

12 And there was, I think, from my vantage point, a
13 monumental effort to try to get everyone to the table to do
14 reasonable resets that would be good for the stakeholders at
15 HCLOF and be good for the creditors of Acis, including Josh
16 Terry. That was always the balancing act that most of us were
17 focused on during the Acis bankruptcy. But Highland, I
18 believe, directing HCLOF's strategy, just did not want the
19 resets to happen.

20 So, again, part of me, I suppose, just wants to make the
21 record clear on something that I fear not everyone is clear
22 about. And I say that because the comment was made that the
23 injunctions, the preliminary injunctions sought by the Acis
24 trustee caused the plummet in value, and I think that's just
25 not an accurate statement. I think litigation strategies are

1 what caused the plummet in value, and that's why I think
2 ultimately HarbourVest would potentially have a meritorious
3 claim here in a significant amount if this litigation were to
4 go forward.

5 So, I approve this under 9019. And again, Mr. Morris,
6 you'll upload an order.

7 It is now 1:41, so let's as quickly as possible hear the
8 other motion that I don't think had any objections. Mr.
9 Morris?

10 MR. MORRIS: Your Honor, just -- yes, just very
11 quickly, just four things.

12 With respect to the order, I just want to make it clear
13 that we are going to include a provision that specifically
14 authorizes the Debtor to engage in -- to receive from
15 HarbourVest the asset, you know, the HCLOF interest, and that
16 that's consistent with its obligations under the agreement.

17 The objection has been withdrawn, I think the evidence is
18 what it is, and we want to make sure that nobody thinks that
19 they're going to go to a different court somehow to challenge
20 the transfer. So I just want to put the Court on notice and
21 everybody on notice that we are going to put in a specific
22 finding as to that.

23 THE COURT: All right. Fair --

24 MR. MORRIS: Number two is --

25 THE COURT: Fair enough. I do specifically approve

1 that mechanism and find it is appropriate and supported by the
2 underlying agreements.

3 And just so you know, I spent some time noodling this
4 yesterday before I knew it was going to be settled, so I'm not
5 just casually doing that. I think it's fine.

6 Okay. Next?

7 MR. MORRIS: Thank you very much, Your Honor. Number
8 two, with respect to the motion to pay, there is no objection.
9 If we can just submit an order. Or if Your Honor has other
10 guidance for us, we're happy to take it.

11 THE COURT: Okay. Does anyone have anything they
12 want to say about that motion?

13 Again, I looked at it. I didn't see any objections. I
14 didn't see any problem with it. It's -- you know, you're
15 going through this exercise because of the earlier protocol
16 order.

17 MR. MORRIS: Correct.

18 THE COURT: All right. Well, if there's nothing,
19 then, I will approve that, finding there is good cause to
20 grant that motion.

21 MR. MORRIS: Okay.

22 THE COURT: All right. Is the only other
23 housekeeping matter --

24 MR. MORRIS: I --

25 THE COURT: -- we have the contempt motion?

1 MR. MORRIS: It is, and I do -- I do have to point
2 out how troubled the Debtor is to learn that Mr. Dondero was
3 still receiving documents from Highland as late as this
4 morning. It's got to be a violation of both the TRO -- I
5 guess it's now the preliminary injunction.

6 I would respectfully request -- I know that time is what
7 it is -- but maybe Mr. Dondero can answer now where he got the
8 document, who he got the document from, what other documents
9 he's gotten from the Debtor since Your Honor ordered him not
10 to communicate with the Debtor's employees.

11 This is not saying hello in the hallway. I mean, this is
12 just -- it is really troubling, Your Honor, and it's why we
13 need the contempt motion heard as soon as possible.

14 THE COURT: Well, Mr. Wilson, do you want to address
15 that? I think the words I heard were that you just got the
16 document this morning, and you got it from Mr. Dondero, but we
17 don't know where and when Mr. Dondero got it. Mr. Wilson, are
18 you there?

19 MR. LYNN: I'm afraid I'm back, Your Honor.

20 THE COURT: Okay.

21 MR. LYNN: I am not sure whether Mr. Dondero had it
22 in his files from some -- from back before he was asked not to
23 communicate with members or with employees of the Debtor. I
24 believe -- I believe he's with us, though I don't think he's
25 available by video.

1 Are you there, Mr. Dondero?

2 THE COURT: We can't hear you, Mr. Dondero.

3 MR. DONDERO: Judge?

4 THE COURT: Oh, go ahead.

5 MR. DONDERO: Can you hear me now?

6 THE COURT: Yes.

7 MR. DONDERO: Yes, I -- I -- when I moved offices, I
8 found it in a stack of paper, and --

9 MR. LYNN: I understand it shows that his microphone
10 is working.

11 THE COURT: Okay. Go ahead.

12 MR. DONDERO: Can you hear me?

13 THE COURT: Yes, go ahead.

14 MR. DONDERO: Yeah, I -- I'm sitting in new offices.
15 I've got everything in boxes. I was going through everything
16 yesterday, and I found those emails in a stack of papers and I
17 sent them over because I thought they would be relevant
18 relative to Seery's initial impression.

19 THE COURT: Okay. Well, let's talk about the timing
20 of this hearing. Mr. Morris, I'm going to -- I'm going to ask
21 you why --

22 MR. LYNN: Michael Lynn, Your Honor. I don't want to
23 waste the Court's time. We have not made available anything
24 to the Court objecting to the expedited hearing on the
25 contempt motion. We've been here.

1 I would say to Your Honor that if Mr. Dondero is indeed in
2 contempt, or was in contempt toward the motion, which has
3 nothing to do with the document that was presented as Dondero
4 Exhibit N, there is no need to hear this on an expedited
5 basis.

6 Every time we turn around, Your Honor, the Debtor is
7 asking that something be heard on an expedited basis. And we
8 have not opposed that. We have not fought that, to speak of,
9 to date. But this is getting a little ridiculous. We're
10 within days of confirmation of the Debtor's plan, and it is
11 simply a means of causing pain and suffering to Mr. Dondero
12 and those who are working with him and for him. And he does
13 have employees at NexPoint who are assisting him.

14 So we most strongly object to being put on a schedule
15 where we are expected to get a response to the contempt motion
16 on file by Monday, today being Thursday, and a weekend
17 intervening. And we strongly object to any setting of this
18 contempt motion on Tuesday or Wednesday. It is absurd, and it
19 is done solely, solely, Your Honor, to cause pain.

20 THE COURT: All right.

21 MR. MORRIS: Your Honor, if I may?

22 THE COURT: Please.

23 MR. MORRIS: Just very briefly, we had a hearing the
24 other day. The evidence is the exact same. The evidence is
25 crystal clear that the violations are meaningful, they're

1 substantial, and they are repeated.

2 After the TRO was entered into, Mr. Dondero and only Mr.
3 Dondero chose to interfere with the Debtor's business. Mr.
4 Dondero and only Mr. Dondero chose to communicate with the
5 Debtor's employees, not about saying hello in the hallway but
6 about coordinating a legal defense strategy against the
7 Debtor.

8 The need is immediate, Your Honor, and I would
9 respectfully request that the hearing be set for Tuesday or
10 Wednesday. They've had this motion now since the 7th of
11 January. They had a full evidentiary hearing, so they know
12 most of the evidence that's going to be presented. They have
13 a whole team of -- they have an army of lawyers, Your Honor,
14 and half a dozen firms working on behalf of Mr. Dondero and
15 his interests. For him to cry here, for him to cry that this
16 is too much is really -- it's obscene. It just is.

17 THE COURT: All right. I'm going to say a couple --

18 MR. LYNN: That is absurd.

19 THE COURT: I'm going to say a couple of things. One
20 is that I -- well, the one time I remember getting reversed
21 for holding someone in contempt of court, the District Court
22 felt like I had not given enough notice of that. The District
23 Courts, what they think is reasonable notice, is sometimes
24 very different from what the bankruptcy judges think. We're
25 used to going very lickety-split fast in the bankruptcy

1 courts. And the Courts of Appeals, District Court, Courts of
2 Appeals obviously, for good reason, are very concerned about
3 due process in this kind of context. So I'm sensitive to
4 that.

5 I'm also sensitive to the fact that it is monetary damages
6 that are being sought here to purge the contempt. Okay? The
7 shifting of attorneys' fees is basically what I understand is
8 being sought at this point. You know, we have a preliminary
9 injunction halting behavior at this point, and so I think
10 that's another reason I'm hesitant to give an emergency
11 hearing. I feel like monetary damages can wait and we can
12 give 21-plus days' notice of the hearing.

13 But I'm going to throw this out there as well. If I do
14 feel like there is a showing of contempt, if I do feel like
15 the phone -- as I told you the other day, I'm very, very
16 fixated on the phone that may have been destroyed or thrown
17 away, maybe at Mr. Dondero's suggestion. I mean, the
18 potential monetary sanction here may be very, very large if
19 the evidence plays out in the way I fear it might play out.
20 So I need to make sure everybody has adequate time to prepare
21 for that hearing and make sure I get all the evidence I need
22 to see. All right? Contempt of court is very, very, very,
23 very serious, and I don't think anyone would deny that.

24 So, with that, it was filed what day? January 4th? Is
25 that what I heard? Or --

1 MR. MORRIS: January 7th, I believe, Your Honor.

2 THE COURT: January 7th? All right. Well, Traci,
3 are you there? Hopefully, you're not in a hunger coma at this
4 point.

5 THE CLERK: I am here.

6 THE COURT: Okay. We have -- we're going to have to
7 go to that first week of February, right? Because we've got
8 the confirmation hearing that, you know, late in January, and
9 then --

10 THE CLERK: Yes. Uh-huh.

11 THE COURT: Okay. Do you have an available date to
12 give right now?

13 THE CLERK: How about -- if you're willing to hear
14 them on Friday, February 5th.

15 THE COURT: Okay. I can do that. February 5th at
16 9:30. Any -- anybody want to argue about that?

17 MR. MORRIS: Thank you, Your Honor. That's
18 acceptable to the Debtor.

19 THE COURT: Okay. Mr. Lynn, is that good with you?

20 MR. LYNN: We'll do that, Your Honor. I would say,
21 by the way, that I'll be happy to buy Mr. Seery, out of my own
22 pocket, five cell phones, which ought to make up for the one
23 that was lost, though I recognize that those cell phones will
24 not have on them the privileged information, the conversations
25 between his lawyers and Mr. Dondero that I imagine he was

1 looking forward to seeing.

2 THE COURT: Well, I wouldn't want him to see that
3 information, but I do think he's entitled to any nonprivileged
4 information, texting, or calls that are on that phone. So,
5 again, I'm either going to hear good explanations for that or
6 not, but it's something very concerning to me.

7 All right. So we have a game plan.

8 I'm going to ask, Did we have good-faith negotiations
9 between Dondero and the Committee and anything positive to
10 report? I'll ask Mr. Lynn and Mr. Clemente to weigh in.

11 MR. CLEMENTE: Yes, Your Honor. I'll go first, Your
12 Honor. Mr. Lynn and I have exchanged several emails over the
13 weekend, and the message that I sent to Mr. Lynn was very
14 clear. There had been a term sheet that Mr. Seery had sent
15 back to Mr. Dondero. I had asked Mr. Lynn to take a pencil
16 out and be very specific as to what it was Mr. Dondero was
17 prepared to do in connection with the pot plan. I instructed
18 him that some of the issues that the Committee still has is
19 obviously the overall value, along with the concept that's
20 signing up to a promise from Mr. Dondero to comply with
21 (indiscernible) as part of that value. As Your Honor may
22 understand, the Committee is obviously very skeptical of Mr.
23 Dondero's future performance under an agreement that he enters
24 into.

25 Those are but a couple of issues, Your Honor, that I

1 advised Mr. Lynn were very concerning to the Committee. And I
2 suggested to him that if he wanted to move things forward, the
3 best way to do it would be to come to us with a fulsome term
4 sheet that explained exactly what it was in clear and precise
5 detail that Mr. Dondero was proposing, and that would be the
6 best way to move the process forward, Your Honor.

7 THE COURT: All right. Mr. Lynn, anything to add to
8 that?

9 MR. LYNN: Well, Your Honor, my experience in
10 negotiations is that it is useful to agree on substantive
11 terms, or at least be in the ballpark, before term sheets are
12 exchanged. Long ago, a term sheet was prepared and presented
13 to the Committee. Ultimately, I think it was rejected, though
14 I don't know if we ever received a formal rejection.

15 I explained in my emails, which I'm happy to share with
16 the Court if Your Honor wants to see them, why I was reluctant
17 to try to put into a term sheet form the proposal that I
18 suggested to Mr. Clemente. As I said, I'm more than happy to
19 provide you with that email chain and let you form your own
20 judgment, Your Honor, as to whether we're proceeding in good
21 faith.

22 THE COURT: All right. Well I'm not going to ask --

23 MR. POMERANTZ: Your Honor? Your Honor, this is Jeff
24 Pomerantz.

25 THE COURT: -- to see any of that. Mr. Pomerantz?

1 MR. POMERANTZ: May I just be heard real quickly?

2 THE COURT: Sure.

3 MR. POMERANTZ: Your Honor, we also took Your Honor's
4 comments to heart. We, Mr. Seery and I, had an over-an-hour
5 conversation with Mr. Lynn and with Mr. Bonds. We provided
6 them with our thoughts as to what they needed to do in order
7 to move forward. Of course, it's not really the Debtor to
8 agree. It's the creditors to agree. But as Mr. Seery has
9 testified many times before and as I have told the Court, we
10 would support a plan that the Committee and Mr. Dondero could
11 get behind.

12 So we again -- I'm not going to divulge the nature of
13 those communications, but we suggested several things that Mr.
14 Dondero could do in order to move the ball forward, and
15 unfortunately, we have not seen any of those things done thus
16 far. So we are, at this point, not optimistic that there will
17 be a grand bargain plan.

18 THE COURT: All right.

19 MR. DONDERO: Your Honor, could I comment for a
20 second? This is Mr. Dondero.

21 THE COURT: If you and your counsel want you to
22 comment, you can comment.

23 MR. DONDERO: I'd love to do a pot plan. I would
24 love to reach some kind of settlement and everybody move on
25 with their lives. The estate started with \$360 million of

1 third-party assets and \$90 million of notes. The \$360 million
2 of third-party assets are down to \$130 million.

3 MR. POMERANTZ: Again, Your Honor, I must interrupt.
4 I did this at the last hearing, and it's not my practice to
5 interrupt, but issues regarding what the value is or not, it's
6 going to require a response, and that's not really before Your
7 Honor. I think before Your Honor is --

8 MR. DONDERO: Okay.

9 MR. POMERANTZ: -- have there been negotiations?
10 Have they been in good faith? If Mr. Dondero wanted to
11 address that, that's fine, but I object to having any
12 discussion at this point, especially with Mr. Dondero not even
13 under oath, on what the nature of the value of the assets and
14 why they have changed and what not.

15 THE COURT: Well, --

16 MR. POMERANTZ: It's just not appropriate.

17 THE COURT: I understand --

18 MR. DONDERO: Okay. Can I --

19 THE COURT: Stop.

20 MR. DONDERO: Can I -- can I finish?

21 THE COURT: Let me please respond to that. I
22 understand your concern, but I've heard from Mr. Seery
23 testimony many months ago about the value plummeting during
24 the case. And I asked why, and I got some explanations. This
25 is not evidence. This is just, you know, this is not going to

1 be binding in any way. Mr. Dondero can speak as to what he
2 thinks, you know, the situation is.

3 Go ahead, Mr. Dondero.

4 MR. DONDERO: Okay. I'm not trying to fixate on the
5 numbers. And as far as the third-party assets are, we would
6 be willing to pay -- I would be willing to pay for those. I'd
7 be willing to pay more, and even some value for the affiliate
8 notes that were really part of compensation agreements
9 throughout the history of Highland and avoid the POC
10 arguments. I'd be willing to pay for the assets and I'd be
11 willing to pay even more than that.

12 I have no transparency in terms of what the assets are,
13 and there's no fulsome discussion in terms of, well, here are
14 the assets, here are the notes, here's what we think the
15 values are, can you get to this number? It's just a -- you --
16 the -- it -- I don't view there is good-faith negotiations
17 going on because it's always just a: You need to put a big
18 number on a piece of paper; otherwise, you're going to get run
19 over.

20 And there's no back and forth going on, but it's not due
21 to a lack of willingness on my part. And maybe there needs to
22 be a committee set up. Maybe there needs to be, I don't know,
23 a mediator or an examiner or somebody to try and push through
24 the pot plan, but there's nothing happening. People are not
25 returning the judge's calls, I mean, Mr. Lynn's calls, or my

1 calls. They're -- there's -- despite efforts of our -- of my
2 own and a willingness of my own, there's no negotiations of
3 any sort going on at the moment.

4 THE COURT: All right. I don't want anyone to
5 respond to that. I know people have different views of what's
6 going on. But let me just say a couple of things, and then
7 we're done.

8 We do have a Committee in this case. We have a Committee
9 with very sophisticated members and very sophisticated
10 professionals. Okay? That's who I wanted you to be talking
11 to before the end of the day Tuesday.

12 We have had co-mediators in this case. Okay? And, you
13 know, I identified very sophisticated human beings for that
14 role. Okay? And in fact, there ended up being settlements
15 that flowed out of the co-mediator process.

16 We're now 15 months into the case. There are major,
17 significant compromises now: HarbourVest, UBS, Acis, Terry,
18 and Redeemer Committee. I hate to use a worn-out metaphor,
19 but the train is leaving the station. We've got confirmation.
20 I've pushed out two weeks. I mean, you all are either going
21 to get there in the next few days or we're just going to go
22 forward with I think what everyone, you know, would rather be
23 a pot plan, but if we can't get there, we're just going to
24 have to consider the plan that's on the table now. Okay?

25 You know, the Committee, again, they're sophisticated.

1 They can compare apples to oranges and decide whether the plan
2 on the table, with its risks of future litigation and
3 recoveries, whether it's better or worse than whatever
4 consideration you're offering, Mr. Dondero.

5 And you know, as we all know, there is distrust here,
6 there, and everywhere among these parties. So I can totally
7 understand them, you know, taking a hard line: We either get
8 all cash or we're just not going to mess with it. We don't
9 want to risk broken promises. We'd rather just do litigation.

10 So, anyway, that's as much as I'm going to say except I am
11 going to further direct good-faith negotiations. It sounds
12 like to me a written term sheet might be the appropriate next
13 step, given where I've heard things are at the moment. But,
14 you know, I guess we don't have any hearings between now and
15 the 26th, right? No Highland hearings that I can think of
16 between now and the 26th.

17 MR. POMERANTZ: I don't think so.

18 MR. MORRIS: I think that's correct, Your Honor.

19 THE COURT: So you have all this time --

20 MR. MORRIS: At the moment.

21 THE COURT: You have all this time to negotiate and
22 simultaneously get ready for the confirmation hearing without
23 any other battles. So I know you will use the time well.

24 All right. We're adjourned.

25 THE CLERK: All rise.

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MR. BONDS: Thank you, Your Honor.
(Proceedings concluded at 2:04 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

01/16/2021

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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APPENDIX 10



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed January 20, 2021


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER APPROVING DEBTOR'S SETTLEMENT
WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND
AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion"),² filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"); and this Court having considered (a) the

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

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



Motion; (b) the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1631] (the "Morris Declaration"), and the exhibits annexed thereto, including the Settlement Agreement attached as **Exhibit "1"** (the "Settlement Agreement"); (c) the arguments and law cited in the Motion; (d) *James Dondero's Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest* [Docket No. 1697] (the "Dondero Objection"), filed by James Dondero; (e) the *Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1706] (the "Trusts' Objection"), filed by the Dugaboy Investment Trust ("Dugaboy") and Get Good Trust ("Get Good," and together with Dugaboy, the "Trusts"); (f) *CLO Holdco's Objection to HarbourVest Settlement* [Docket No. 1707] (the "CLOH Objection" and collectively, with the Dondero Objection and the Trusts' Objection, the "Objections"), filed by CLO Holdco, Ltd.; (g) the *Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1731] (the "Debtor's Reply"), filed by the Debtor; (h) the *HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* [Docket No. 1734] (the "HarbourVest Reply"), filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"); (i) the testimonial and documentary evidence admitted into evidence during the hearing held on January 14, 2021 (the "Hearing"), including assessing the credibility of the witnesses; and (j) the

arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed, for the reasons stated on the record, (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law, (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views, and (ii) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.
2. All objections to the Motion are overruled.
3. The Settlement Agreement, attached hereto as **Exhibit 1**, is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

4. All objections to the proofs of claim subject to the Motion³ are overruled as moot in light of the Court's approval of the Settlement Agreement.

5. The Debtor, HarbourVest, and all other parties are authorized to take any and all actions necessary and desirable to implement the Settlement Agreement without need of further approval or notice.

6. Pursuant to the express terms of the *Members Agreement Relating to the Company*, dated November 15, 2017, HarbourVest is authorized to transfer its interests in HCLOF to a wholly-owned and controlled subsidiary of the Debtor pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.* without the need to obtain the consent of any party or to offer such interests first to any other investor in HCLOF.

7. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

³ This includes the *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906].

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

WHEREAS, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

WHEREAS, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

WHEREAS, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

WHEREAS, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

WHEREAS, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

WHEREAS, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

WHEREAS, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”) and together with the HarbourVest Response, the “HarbourVest Pleadings”);

WHEREAS, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

WHEREAS, the Debtor disputes the HarbourVest Claims;

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).¹

WHEREAS, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

WHEREAS, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

2. **Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

¹ All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (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 "HarbourVest Released Claims").

(b) Upon the Effective Date, 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 HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest 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 in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to 11 U.S.C. § 363), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a "Support Termination Event"): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

HARBOURVEST

HarbourVest Partners L.P.
Attention: Michael J. Pugatch
One Financial Center
Boston, MA 02111
Telephone No. 617-348-3712
E-mail: mpugatch@harbourvest.com

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

Debevoise & Plimpton LLP
Attention: M. Natasha Labovitz, Esq.
919 Third Avenue
New York, NY 10022
Telephone No. 212-909-6649
E-mail: nlabovitz@debevoise.com

THE DEBTOR

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
Telephone No.: 972-628-4100
Facsimile No.: 972-628-4147
E-mail: jpseeryjr@gmail.com

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

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910
Facsimile No.: 310-201-0760
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

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IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: /s/ James P. Seery, Jr.
Name: James P. Seery, Jr.
Its: CEO/CRO

HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its
Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed
Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General
Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC,
its Managing Member**

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

Exhibit A

**TRANSFER AGREEMENT
FOR ORDINARY SHARES OF
HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of January ____, 2021 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
 - d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
 - e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.
2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:
- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
 - b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
 - c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
 - d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
 - e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:
 - a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
 - b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
 - c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.
4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).
5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):
 - a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
 - b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

 - c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.
6. Miscellaneous.
 - a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

[Remainder of Page Intentionally Blank]

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

TRANSFeree:

HCMLP Investments, LLC

By: Highland Capital Management, L.P.

Its: Member

By: _____

Name: James P. Seery, Jr.

Title: Chief Executive Officer

PORTFOLIO MANAGER:

Highland HCF Advisor, Ltd.

By: _____

Name: James P. Seery, Jr.

Title: President

FUND:

Highland CLO Funding, Ltd.

By: _____

Name:

Title:

[Additional Signatures on Following Page]

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

TRANSFERORS:

HarbourVest Dover Street IX Investment L.P.

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: _____

Name: Michael Pugatch

Title: Managing Director

HV International VIII Secondary L.P.

By: HIPEP VIII Associates L.P.
Its General Partner

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global AIF L.P.

By: HarbourVest Partners (Ireland) Limited
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest Skew Base AIF L.P.

By: HarbourVest Partners (Ireland) Limited
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global Fund L.P.

By: HarbourVest 2017 Global Associates L.P.
Its General Partner

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

[Signature Page to Transfer of Ordinary Shares of Highland CLO Funding, Ltd.]

Exhibit A

<u>Transferee Name</u>	<u>Number of Shares</u>	<u>Percentage</u>
HarbourVest Dover Street IX Investment L.P.	54,355,482.14	71.0096%
HarbourVest 2017 Global AIF L.P.	7,426,940.38	9.7025%
HarbourVest 2017 Global Fund L.P.	3,713,508.46	4.8513%
HV International VIII Secondary L.P.	9,946,780.11	12.9944%
HarbourVest Skew Base AIF L.P.	1,103,956.03	1.4422%

APPENDIX 11

At all relevant times, HCM was headed by CEO and potential party James P. Seery (“Seery”). Seery negotiated a settlement with the several Harbourvest² entities who owned 49.98% of HCLOF. The deal had HCM (or its designee) purchasing the Harbourvest membership interests in HCLOF for \$22.5 million. Recent revelations, however, show that the sale was predicated upon a sales price that was vastly below the Net Asset Value (“NAV”) of those interests. Upon information and belief, the NAV of HCLOF’s assets had risen precipitously, but was not disclosed to Harbourvest nor to Plaintiffs.

Under the Advisers Act, Defendants have a non-waivable duty of loyalty and candor, which includes its duty not to inside trade with its own investors, *i.e.*, not to trade with an investor to which HCM and Seery had access to superior non-public information. Upon information and belief, HCM’s internal compliance policies required by the Advisers Act would not generally have allowed a trade of this nature to go forward—meaning, the trade either was approved in spite of compliance rules preventing it, or the compliance protocols themselves were disabled or amended to a level that leaves Defendants HCM and HCLOF exposed to liability. Thus, Defendants have created an unacceptable perpetuation of exposure to liability.

Additionally, Defendants are liable for a pattern of conduct that gives rise to liability for their conduct of the enterprise consisting of HCM in relation to HCFA and HCLOF, through a pattern of concealment, misrepresentation, and violations of the securities rules. In the alternative, HCFA and HCM, are guilty of self-dealing, violations of the Advisers Act, and tortious interference by (a) not disclosing that Harbourvest had agreed to sell at a price well below the current NAV, and (b) diverting the Harbourvest opportunity to themselves.

² “Harbourvest” refers to the collective of Harbourvest Dover Street IX Investment, L.P., Harbourvest 2017 Global AIF, L.P., Harbourvest 2017 Global Fund, L.P., HV International VIII Secondary, L.P., and Harbourvest Skew Base AIF, L.P. Each was a member of Defendant Highland CLO Funding, Ltd.

For these reasons, judgment should be issued in Plaintiffs' favor.

II.

PARTIES

1. Plaintiff CLO Holdco, Ltd. is a limited company incorporated under the laws of the Cayman Islands.
2. Plaintiff Charitable DAF Fund, L.P., ("DAF") is a limited partnership formed under the laws of the Cayman Islands.
3. Defendant Highland Capital Management, L.P. is a limited partnership with its principal place of business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. It may be served at its principal place of business or through its principal officer, James P. Seery, Jr., or through the Texas Secretary of State, or through any other means authorized by federal or state law.
4. Defendant Highland HCF Advisor, Ltd. is a limited company incorporated under the laws of the Cayman Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201. It is a registered investment adviser ("RIA") subject to the laws and regulations of the Investment Advisers Act of 1940 (the "Adviser's Act"). It is a wholly-owned subsidiary of Highland Capital Management, L.P.
5. Nominal Defendant Highland CLO Funding, Ltd. is a limited company incorporated under the laws of the Island of Guernsey. Its registered office is at First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey GY1 6HJ, Channel Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201.
6. Potential party James P. Seery, Jr. ("Seery") is an officer and/or director and/or control person of Defendants Highland Capital Management, L.P., Highland CLO Funding, Ltd., and Highland HCF Advisor, Ltd., and is a citizen of and domiciled in Floral Park, New York.

III.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this dispute under 28 U.S.C. § 1331 as one or more rights and/or causes of action arise under the laws of the United States. This Court has supplemental subject matter jurisdiction over all other claims under 28 U.S.C. § 1367.

8. Personal jurisdiction is proper over the Defendants because they reside and/or have continual contacts with the state of Texas, having regularly submitted to jurisdiction here. Jurisdiction is also proper under 18 U.S.C. § 1965(d).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because one or more Defendants reside in this district and/or a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of property that is the subject of the action is situated in this district. Venue in this district is further provided under 18 U.S.C. § 1965(d).

IV.

RELEVANT BACKGROUND

HCLOF IS FORMED

10. Plaintiff DAF is a charitable fund that helps several causes throughout the country, including providing funding for humanitarian issues (such as veteran's welfare associations and women's shelters), public works (such as museums, parks and zoos), and education (such as specialty schools in underserved communities). Its mission is critical.

11. Since 2012, DAF was advised by its registered investment adviser, Highland Capital Management, L.P., and its various subsidiaries, about where to invest. This relationship was governed by an Investment advisory Agreement.

12. At one point in 2017, HCM advised DAF to acquire 143,454,001 shares of HCLOF, with HCFA (a subsidiary of HCM) serving as the portfolio manager. DAF did so via a holding entity, Plaintiff CLO Holdco, Ltd.

13. On November 15, 2017, through a Subscription and Transfer Agreement, the DAF entered into an agreement with others to sell and transfer shares in HCLOF, wherein the DAF retained 49.02% in CLO Holdco.

14. Pursuant to that agreement, Harbourvest acquired the following interests in the following entities:

Harbourvest Dover Street IX Investment, L.P., acquired 35.49%;

Harbourvest 2017 Global AIF, L.P., acquired 2.42%;

Harbourvest 2017 lobal Fund, L.P., acquired 4.85%;

HV International VIII Secondary, L.P., acquired 6.5%; and

Harbourvest Skew Base AIF, L.P., acquired 0.72%;

for a total of 49.98% (altogether, the “Harbourvest interests”).

15. On or about October 16, 2019, Highland Capital Management filed for Chapter 11 bankruptcy in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, in the case styled *In Re: Highland Capital Management, L.P., Debtor*, Cause No. 19-34054, (the “HCM Bankruptcy” and the Court is the “Bankruptcy Court”).

**The Harbourvest Settlement with
Highland Capital Management in Bankruptcy**

16. On April 8, 2020, Harbourvest submitted its proofs of claim in the HCM bankruptcy proceeding. Annexed to its proofs of claims was an explanation of the Proof of Claim and the basis therefor setting out various pre-petition allegations of wrongdoing by HCM. *See, e.g.*, Case No. 19-bk-34054, Doc. 1631-5.

17. The debtor, HCM, made an omnibus response to the proofs of claims, stating they were duplicative of each other, overstated, late, and otherwise meritless.

18. Harbourvest responded to the omnibus objections on September 11, 2020. *See* Cause No. 19-bk-34054, Doc. 1057.

19. Harbourvest represented that it had invested in HCLOF, purchasing 49.98% of HCLOF's outstanding shares.

20. Plaintiff CLO Holdco was and is also a 49.02% holder of HCLOF's member interests.

21. In its Omnibus Response, Harbourvest explained that its claims included unliquidated legal claims for fraud, fraud in the inducement, RICO violations under 18 U.S.C. 1964, among others (the "Harbourvest Claims"). *See* Cause No. 19-bk-34054, Doc. 1057.

22. The Harbourvest Claims centered on allegations that when Harbourvest was intending to invest in a pool of Collateralized Loan Obligations, or CLOs, that were then-managed by Acis Capital Management ("Acis"), a subsidiary of HCM, HCM failed to disclose key facts about ongoing litigation with a former employee, Josh Terry.

23. Harbourvest contended that HCM never sufficiently disclosed the underlying facts about the litigation with Terry, and HCM's then-intended strategy to fight Terry caused HCLOF to incur around \$15 million in legal fees and costs. It contended that had it known the nature of the lawsuit and how it would eventually turn out, Harbourvest never would have invested in HCLOF. *See* Cause No. 19-bk-34054, Doc. 1057.

24. HCLOF's portfolio manager is HCFA. HCM is the parent of HCFA and is managed by its General Partner, Strand Management, who employs Seery and acts on behalf of HCM.

25. Before acceding to the Harbourvest interests, HCM was a 0.6% holder of HCLOF interests.

26. While even assuming Harbourvest's underlying claims were valid as far as the lost \$15 million went, the true damage of the legal fees to Harbourvest would have been 49.98% of the HCLOF losses (i.e., less than \$7.5 million). Harbourvest claimed that it had lost over \$100 million in the HCLOF transaction due to fraud, which, after trebling under the racketeering statute, it claimed it was entitled to over \$300 million in damages.

27. In truth, as of September 2020, Harbourvest had indeed lost some \$52 million due to the alleged diminishing value of the HCLOF assets (largely due to the underperformance of the Acis entities³)—and the values were starting to recover.

28. HCM denied the allegations in the Bankruptcy Court. Other than the claim for waste of corporate assets of \$15 million, HCM at all times viewed the Harbourvest legal claims as being worth near zero and having no merit.

29. On December 23, 2020, HCM moved the Court to approve a settlement between itself and Harbourvest. No discovery had taken place between the parties, and Plaintiff did not have any notice of the settlement terms or other factors prior to the motion's filing (or even during its pendency) in order to investigate its rights.

30. HCM set the hearing right after the Christmas and New Year's holidays, almost ensuring that no party would have the time to scrutinize the underpinnings of the deal.

31. On January 14, 2021, the Bankruptcy Court held an evidentiary hearing and approved the settlement in a bench ruling, overruling the objections to the settlement.

³ Acis was being managed by Joshua Terry. JP Morgan had listed the four ACIS entities under his management as the four worst performers of the 1200 CLOs it evaluated.

32. An integral part of the settlement was allowing \$45 million in unsecured claims that, at the time of the agreement, were expected to net Harbourvest around 70 cents on the dollar. In other words, Harbourvest was expected to recover around \$31,500,000 from the allowed claims.

33. As part of the consideration for the \$45 million in allowed claims, Harbourvest agreed to transfer all of its interests in HCLOF to HCM or its designee.

34. HCM and Seery rationalized the settlement value by allocating \$22.5 million of the net value of the \$45 million in unsecured claims as consideration to purchase Harbourvest's interests in HCLOF, meaning, if 70% of the unsecured claims—i.e., \$31.5 million—was realized, because \$22.5 million of that would be allocated to the purchase price of the Harbourvest interests in HCLOF, the true “settlement” for Harbourvest's legal claims was closer to \$9 million.

35. Plaintiffs here are taking no position at this time about the propriety of settling the Harbourvest legal claims for \$9 million. That is for another day.

36. At the core of this lawsuit is the fact that HCM purchased the Harbourvest interests in HCLOF for \$22.5 million knowing that they were worth far more than that.

37. It has recently come to light that, upon information and belief, the Harbourvest interests, as of December 31, 2020, were worth in excess of \$41,750,000, and they have continued to go up in value.

38. On November 30, 2020, which was less than a month prior to the filing of the Motion to Approve the Settlement, the net asset value of those interests was over \$34.5 million. Plaintiffs were never made aware of that.

39. The change is due to how the net asset value, or NAV, was calculated. The means and methods for calculating the “net asset value” of the assets of HCLOF are subject to and

governed by the regulations passed by the SEC pursuant to the Adviser's Act, and by HCM's internal policies and procedures.

40. Typically, the value of the securities reflected by a market price quote.

41. However, the underlying securities in HCLOF are not liquid and had not been traded in a long while.

42. There not having been any contemporaneous market quotations that could be used in good faith to set the marks⁴ meant that other prescribed methods of assessing the value of the interests, such as the NAV, would have been the proper substitutes.

43. Seery testified that the fair market value of the Harbourvest HCLOF interests was \$22.5 million. Even allowing some leeway there, it was off the mark by a mile.

44. Given the artifice described herein, Seery and the entity Defendants had to know that the representation of the fair market value was false. But it does not appear that they disclosed it to Harbourvest to whom they owed fiduciary duties as the RIA in charge of HCLOF, and they certainly did not disclose the truth to the Plaintiff.

45. It is either the case that (i) Defendants conducted the proper analysis to obtain a current value of the assets but decided to use a far lower valuation in order to whitewash the settlement or enrich the bankruptcy estate; *or* (ii) Defendants never conducted the proper current valuation, and therefore baselessly represented what the current value of the assets was, despite knowingly having no reasonable basis for making such a claim.

46. For years HCM had such internal procedures and compliance protocols. HCM was not allowed by its own compliance officers to trade with an investor where HCM had superior knowledge about the value of the assets, for example. While Plaintiff has no reason to believe that

⁴ The term "mark" is shorthand for an estimated or calculated value for a non-publicly traded instrument.

those procedures were scrapped in recent months, it can only assume that they were either overridden improperly or circumvented wholesale.

47. Upon finalizing the Harbourvest Settlement Agreement and making representations to the Bankruptcy Court to the Plaintiffs about the value of the Harbourvest Interests, Seery and HCM had a duty to use current values and not rely on old valuations of the assets or the HCLOF interests.

48. Given Defendants' actual or constructive knowledge that they were purchasing Harbourvest's Interests in HCLOF for a less than 50% of what those interests were worth—Defendants owed Plaintiff a fiduciary duty not to purchase them for themselves.

49. Defendants should have either had HCLOF repurchase the interests with cash, or offer those interests to Plaintiff and the other members *pro rata*, before HCM agreed to purchase them all lock, stock and barrel, for no up-front cash.

50. Indeed, had Plaintiff been offered those interests, it would have happily purchased them and therefore would have infused over \$20 million in cash into the estate for the purpose of executing the Harbourvest Settlement.

51. That Defendants (and to perhaps a lesser extent, the Unsecured Creditors Committee (the "UCC")) agreed to pay \$22.5 million for the HCLOF assets, where they had previously not consented to any such expenditure by the estate on behalf of HCLOF, strongly indicates their awareness that they were purchasing assets for far below market value.

52. The above is the most reasonable and plausible explanation for why Defendants and the UCC forwent raising as much as \$22.5 million in cash now in favor of hanging on to the HCLOF assets.

53. Indeed, in January 2021 Seery threatened Ethen Powell that “[Judge Jernigan] is laughing at you” and “we are coming after you” in response to the latter’s attempt to exercise his right as beneficial holder of the CLO, and pointing out a conflict of interest in Seery’s plan to liquidate the funds.

54. HCM’s threat, made by Seery, is tantamount to not only a declaration that he intends to liquidate the funds regardless of whether the investors want to do so, and whether it is in their best interests, but also that HCM intends to leverage what it views as the Bankruptcy Court’s sympathy to evade accountability.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Breaches of Fiduciary Duty

55. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

56. HCM is a registered investment advisor and acts on behalf of HCFA. Both are fiduciaries to Plaintiffs.

57. The Advisers Act establishes an unwaivable federal fiduciary duty for investment advisers.⁵

⁵ See e.g., *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Mortg. Advisors (tama) v. Lewis*, 444 U.S. 11, 17 (1979) (“§ 206 establishes ‘federal fiduciary standards’ to govern the conduct of investment advisers.”); *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”). See also Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own”) (citing Proxy Voting by Investment Advisers, Investment Advisers Act Release No. 2106 (Jan. 31, 2003)).

58. HCM and the DAF entered into an Amended and Restated Investment Advisory Agreement, executed between them on July 1, 2014 (the “RIA Agreement”). It renews annually and continued until the end of January 2021.

59. In addition to being the RIA to the DAF, HCM was appointed the DAF’s attorney-in-fact for certain actions, such as “to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner.” RIA Agreement ¶ 4.

60. The RIA Agreement further commits HCM to value financial assets “in accordance with the then current valuation policy of the Investment Advisor [HCM], a copy of which will provided to the General Partner upon request.” RIA Agreement ¶ 5.

61. While HCM contracted for the recognition that it would be acting on behalf of others and could be in conflict with advice given the DAF, (RIA Agreement ¶ 12), nowhere did it purport to waive the fiduciary duties owed to the DAF not to trade as a principal in a manner that harmed the DAF.

62. HCFA owed a fiduciary duty to Holdco as an investor in HCLOF and to which HCFA was the portfolio manager. HCM owed a fiduciary duty to the DAF (and to Holdco as its subsidiary) pursuant to a written Advisory Agreement HCM and the DAF had where HCM agreed to provide sound investment advice and management functions.

63. As a registered investment adviser, HCM’s fiduciary duty is broad and applies to the entire advisor-client relationship.

64. The core of the fiduciary duty is to act in the best interest of their investors—the advisor must put the ends of the client before its own ends or the ends of a third party.

65. This is manifested in a duty of loyalty and a duty of utmost care. It also means that the RIA has to follow the terms of the company agreements and the regulations that apply to the investment vehicle.

66. The fiduciary duty that HCM and Seery owed to Plaintiff is predicated on trust and confidence. Section 204A of the Advisers Act requires investment advisors (whether SEC-registered or not) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the RIA from trading on material, non-public information. *See* 17 C.F.R. § 275.206(4)-7. That means that Plaintiff should be able to take Defendants at their word and not have to second guess or dig behind representations made by them.

67. The simple thesis of this claim is that Defendants HCFA and HCM breached their fiduciary duties by (i) insider trading with Harbourvest and concealing the rising NAV of the underlying assets—i.e., trading with Harbourvest on superior, non-public information that was neither revealed to Harbourvest nor to Plaintiff; (ii) concealing the value of the Harbourvest Interests; and (iii) diverting the investment opportunity in the Harbourvest entities to HCM (or its designee) without offering it to or making it available to Plaintiff or the DAF.

68. HCM, as part of its contractual advisory function with Plaintiffs, had expressly recommended the HCLOF investment to the DAF. Thus, diverting the opportunity for returns on its investment was an additional breach of fiduciary duty.

69. This violated a multitude of regulations under 27 C.F.R. part 275, in addition to Rules 10b-5 and 10b5-1. 17 CFR 240.10b5-1 (“Rule 10b5-1”) explains that one who trades while possessing non-public information is liable for insider trading, and they do not necessarily have to have *used* the specific inside information.

70. It also violated HCM’s own internal policies and procedures.

71. Also, the regulations impose obligations on Defendants to calculate a *current* valuation when communicating with an investor, such as what may or may not be taken into account, and what cannot pass muster as a current valuation. Upon information and belief, these regulations were not followed by the Defendants.

72. HCM's internal policies and procedures, which it promised to abide by both in the RIA Agreement and in its Form ADV SEC filing, provided for the means of properly calculating the value of the assets.

73. HCM either did not follow these policies, changed them to be out of compliance both with the Adviser Act regulations and its Form ADV representations, and/or simply misrepresented or concealed their results.

74. In so doing, because the fiduciary duty owed to Plaintiff is a broad one, and because Defendants' malfeasance directly implicates its relationship with Plaintiff, Defendants have breached the Advisers Act's fiduciary duties owed to Plaintiff as part of their fiduciary relationship.⁶

75. At no time between agreeing with Harbourvest to the purchase of its interests and the court approval did Defendants disclose to either Harbourvest or to Plaintiff (and the Bankruptcy Court for that matter) that the purchase was at below 50% the current net asset value as well, and when they failed to offer Plaintiff (and the other members of HCLOF) their right to purchase the interests pro rata at such advantageous valuations. Plaintiff's lost opportunity to

⁶ See Advisers Act Release No. 4197 (Sept. 17, 2015) (Commission Opinion) (“[O]nce an investment Advisory relationship is formed, the Advisers Act does not permit an adviser to exploit that fiduciary relationship by defrauding his client in any investment transaction connected to the Advisory relationship.”); see also *SEC v. Lauer*, No. 03-80612-CIV, 2008 U.S. Dist. LEXIS 73026, at 90 (S.D. Fla. Sept. 24, 2008) (“Unlike the antifraud provisions of the Securities Act and the Exchange Act, Section 206 of the Advisers Act does not require that the activity be ‘in the offer or sale of any’ security or ‘in connection with the purchase or sale of any security.’”).

purchase has harmed Plaintiff. Plaintiff had been led to believe by the Defendants that the value of what was being purchased in the Harbourvest settlement by HCM (or its designee) was at fair market value. This representation, repeated again in the Bankruptcy Court during the Harbourvest confirmation, implicitly suggested that a proper current valuation had been performed.

76. Defendant's principal, Seery, testified in January 2021 that the then-current fair market value of Harbourvest's 49.98% interest in HCLOF was worth around \$22.5 million. But by then, it was worth almost double that amount and has continued to appreciate. Seery knew or should have known that fact because the value of some of the HCLOF assets had increased, and he had a duty to know the current value. His lack of actual knowledge, while potentially not overtly fraudulent, would nonetheless amount to a breach of fiduciary duty for acting without proper diligence and information that was plainly available.

77. Furthermore, HCLOF holds equity in MGM Studios and debt in CCS Medical via various CLO positions. But Seery, in his role as CEO of HCM, was made aware during an advisors meeting in December 2020 that Highland would have to restrict its trading in MGM because of its insider status due to activities that were likely to apply upward pressure on MGM's share price.

78. Furthermore, Seery controlled the Board of CCS Medical. And in or around October 2020, Seery was advocating an equatization that would have increased the value of the CCS securities by 25%, which was not reflected in the HCM report of the NAV of HCLOF's holdings.

79. Seery's knowledge is imputed to HCM.

80. Moreover, it is a breach of fiduciary duty to commit corporate waste, which is effectively what disposing of the HCLOF assets would constitute in a rising market, where there

is no demand for disposition by the investors (save for HCM, whose proper 0.6% interest could easily be sold to the DAF at fair value).

81. As holder of 0.6% of the HCLOF interests, and now assignee of the 49.98% Harbourvest Interests), HCM has essentially committed self-dealing by threatening to liquidate HCLOF now that it may be compelled to do so under its proposed liquidation plan, which perhaps inures to the short term goals of HCM but to the pecuniary detriment of the other holders of HCLOF whose upside will be prematurely truncated.

82. Seery and HCM should not be allowed to benefit from the breach of their fiduciary duties because doing so would also cause Plaintiffs irreparable harm. The means and methods of disposal would likely render the full scope of damages to the DAF not susceptible to specific calculation—particularly as they would relate to calculating the lost opportunity cost. Seery and HCM likely do not have the assets to pay a judgment to Plaintiffs that would be rendered, simply taking the lost appreciation of the HCLOF assets.

83. Defendants are thus liable for diverting a corporate opportunity or asset that would or should have been offered to Plaintiff and the other investors. Because federal law makes the duties invoked herein unwaivable, it is preposterous that HCM, as a 0.6% holder of HCLOF, deemed itself entitled to the all of the value and optionality of the below-market Harbourvest purchase.

84. Defendants cannot rely on any contractual provision that purports to waive this violation. Nothing in any agreement purports to permit, authorize or otherwise sanitize Defendants' self-dealing. All such provisions are void.

85. In the fourth quarter of 2020, Seery and HCM notified staff that they would be terminated on December 31, 2020. That termination was postponed to February 28, 2021.

Purchasing the Harbourvest assets without staffing necessary to be a functioning Registered Investment Advisor was a strategic reversal from prior filings that outlined canceling the CLO management contracts and allowing investors to replace Highland as manager.

86. Seery's compensation agreement with the UCC incentivizes him to expedite recoveries and to prevent transparency regarding the Harbourvest settlement.

87. What is more, Seery had previously testified that the management contracts for the funds—HCLOF included—were unprofitable, and that he intended to transfer them. But he later rejected offers to purchase those management contracts for fair value and instead decided to continue to manage the funds—which is what apparently gave rise to the Harbourvest Settlement, among others. He simultaneously rejected an offer for the Harbourvest assets of \$24 million, stating that they were worth much more than that.

88. Because of Defendants' malfeasance, Plaintiffs have lost over \$25 million in damages—a number that continues to rise—and the Defendants should not be able to obtain a windfall.

89. For the same reason, Defendants' malfeasance has also exposed HCLOF to a massive liability from Harbourvest since the assignment of those interests is now one that is likely unenforceable under the Advisers Act, Section 47(b), if there was unequal information.

90. HCM and HCFA are liable as principals for breach of fiduciary duty, as are the principals and compliance staff of each entity.

91. Plaintiffs seek disgorgement, damages, exemplary damages, attorneys' fees and costs. To the extent the Court determines that this claim had to have been brought derivatively on behalf of HCLOF, then Plaintiffs represent that any pre-suit demand would have been futile since asking HCM to bring suit against its principal, Seery, would have been futile.

SECOND CAUSE OF ACTION
Breach of HCLOF Company Agreement
(By Holdco against HCLOF, HCM and HCFA)

92. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

93. On November 15, 2017, the members of HCLOF, along with HCLOF and HCFA, executed the *Members Agreement Relating to the Company* (the “Company Agreement”).

94. The Company Agreement governs the rights and duties of the members of HCLOF.

95. Section 6.2 of HCLOF Company Agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not to an affiliate of the selling member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

96. Here, despite the fact that Harbourvest agreed to sell its interests in HCLOF for \$22.5 million when they were worth more than double that, Defendants did not offer Plaintiff the chance to buy its pro rata share of those interests at the same agreed price of \$22.5 million (adjusted pro rata).

97. The transfer and sale of the interests to HCM were accomplished as part of the Harbourvest Settlement which was approved by the Bankruptcy Court.

98. Plaintiff was not informed of the fact that Harbourvest had offered its shares to Defendant HCM for \$22.5 million—which was under 50% of their true value.

99. Plaintiff was not offered the right to purchase its pro rata share of the Harbourvest interests prior to the agreement being struck or prior to court approval being sought.

100. Had Plaintiff been allowed to do so, it would have obtained the interests with a net equity value over their purchase price worth in excess of \$20 million.

101. No discovery or opportunity to investigate was afforded Plaintiff prior to lodging an objection in the Bankruptcy Court.

102. Plaintiff is entitled to specific performance or, alternatively, disgorgement, constructive trust, damages, attorneys' fees and costs.

THIRD CAUSE OF ACTION
Negligence
(By the DAF and CLO Holdco against HCM and HCFA)

103. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

104. Plaintiffs incorporate the foregoing causes of action and note that all the foregoing violations were breaches of the common law duty of care imposed by law on each of Seery, HCFA and HCM.

105. Each of these Defendants should have known that their actions were violations of the Advisers Act, HCM's internal policies and procedures, the Company Agreement, or all three.

106. Seery and HCM owed duties of care to Plaintiffs to follow HCM's internal policies and procedures regarding both the propriety and means of trading with a customer [Harbourvest], the propriety and means of trading as a principal in an account but in a manner adverse to another customer [the DAF and Holdco], and the proper means of valuing the CLOs and other assets held by HCLOF.

107. It would be foreseeable that failing to disclose the current value of the assets in the HCLOF would impact Plaintiffs negatively in a variety of ways.

108. It would be reasonably foreseeable that failing to correctly and accurately calculate the current net asset value of the market value of the interests would cause Plaintiffs to value the Harbourvest Interests differently.

109. It would be reasonably foreseeable that referring to old and antiquated market quotations and/or valuations of the HCLOF assets or interests would result in a mis-valuation of HCLOF and, therefore, a mis-valuation of the Harbourvest Interests.

110. Likewise, it would have been foreseeable that Plaintiff's failure to give Plaintiff the opportunity to purchase the Harbourvest shares at a \$22.5 million valuation would cause Plaintiff damages. Defendants knew that the value of those assets was rising. They further knew or should have known that whereas those assets were sold to HCM for an allowance of claims to be funded in the future, selling them to Plaintiff would have provided the estate with cash funds.

111. Defendants' negligence foreseeably and directly caused Plaintiff harm.

112. Plaintiff is thus entitled to damages.

FOURTH CAUSE OF ACTION
Racketeering Influenced Corrupt Organizations Act
(CLO Holdco and DAF against HCM)

113. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

114. Defendants are liable for violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*, for the conduct of an enterprise through a pattern of racketeering activity.

115. HCLOF constitutes an enterprise under the RICO Act. Additionally, or in the alternative, HCM, HCLA, and HCLOF constituted an association-in-fact enterprise. The purpose of the association-in-fact was the perpetuation of Seery's position at HCM and using the

Harbourvest settlement as a vehicle to enrich persons other than the HCLOF investors, including Holdco and the DAF, and the perpetuation of HCM's holdings in collateralized loan obligations owned by HCLOF, while attempting to deny Plaintiffs the benefit of its rights of ownership.

116. The association-in-fact was bound by informal and formal connections for years prior to the illicit purpose, and then changed when HCM joined it in order to achieve the association's illicit purpose. For example, HCM is the parent and control person over HCFA, which is the portfolio manager of HCLOF pursuant to a contractual agreement—both are registered investment advisors and provide advisory and management services to HCLOF.

117. Defendants injured Plaintiffs through their continuous course of conduct of the HCM-HCLA-HCLOF association-in-fact enterprise. HCM's actions (performed through Seery and others) constitute violations of the federal wire fraud, mail fraud, fraud in connection with a case under Title 11, and/or securities fraud laws, pursuant to 18 U.S.C. § 1961(1)(B) and (D).

118. HCM operated in such a way as to violate insider trading rules and regulations when it traded with Harbourvest while it had material, non-public information that it had not supplied to Harbourvest or to Plaintiffs.

119. In or about November 2020, HCM and Harbourvest entered into discussions about settling the Harbourvest Claims. Seery's conduct of HCLOF and HCLA on behalf of HCM through the interstate mails and/or wires caused HCM to agree to the purchase of Harbourvest's interests in HCLOF.

120. On or about each of September 30, 2020, through December 31, 2020, Seery, through his conduct of the enterprise, utilized the interstate wires and/or mails to obtain or arrive at valuations of the HCLOF interests. Seery's conduct of the enterprise caused them to cease

sending the valuation reports to Plaintiffs, which eventually allowed Plaintiffs to be misled into believing that Seery had properly valued the interests.

121. On or about September 30, 2020, Seery transmitted or caused to be transmitted through the interstate wires information to HCLOF investors from HCM (via HCFA), including Harbourvest, regarding the value of HCLOF interests and underlying assets.

122. Additionally, Seery operated HCM in such a way that he concealed the true value of the HCLOF interests by utilizing the interstate wires and mails to transmit communications to the court in the form of written representations on or about December 23, 2020, and then further transmitted verbal representations of the current market value (the vastly understated one) on January 14, 2021, during live testimony.

123. However, Harbourvest was denied the full picture and the true value of the underlying portfolio. At the end of October and November of 2020, HCM had updated the net asset values of the HCLOF portfolio. According to sources at HCM at the time, the HCLOF assets were worth north of \$72,969,492 as of November 30, 2020. Harbourvest's share of that would have been \$36,484,746.

124. The HCLOF net asset value had reached \$86,440,024 as of December 31, 2021, which means that by the time Seery was testifying in the Bankruptcy Court on January 14, 2021, the fair market value of the Harbourvest Assets was \$22.5 million, when it was actually closer to \$43,202,724. Seery, speaking on behalf of HCM, knew of the distinction in value.

125. On January 14, 2021, Seery also testified that he (implying HCM, HCLA and HCLOF) had valued the Harbourvest Assets at their current valuation and at fair market value. This was not true because the valuation that was used and testified to was ancient. The ostensible purpose of this concealment was to induce Plaintiff and other interest holdings to take no action.

126. In supporting HCM’s motion to the Bankruptcy Court to approve the Harbourvest Settlement, Seery omitted the fact that HCM was purchasing the interests at a massive discount, which would violate the letter and spirit of the Adviser’s Act.

127. Seery was informed in late December 2020 at an in-person meeting in Dallas to which Seery had to fly that HCLOF and HCM had to suspend trading in MGM Studios’ securities because Seery had learned from James Dondero, who was on the Board of MGM, of a potential purchase of the company. The news of the MGM purchase should have caused Seery to revalue the HCLOF investment in MGM.

128. In or around October 2020, Seery (who controls the Board of CSS Medical) was pursuing “equatization” of CSS Medical’s debt, which would have increased the value of certain securities by 25%. In several communications through the U.S. interstate wires and/or mails, and with Plaintiffs, and the several communications with Harbourvest during the negotiations of the settlement, Seery failed to disclose these changes which were responsible in part for the ever-growing value of the HCLOF CLO portfolio.

129. Seery was at all relevant times operating as an agent of HCM.

130. This series of related violations of the wire fraud, mail fraud, and securities fraud laws, in connection with the HCM bankruptcy, constitute a continuing pattern and practice of racketeering for the purpose of winning a windfall for HCM and himself--a nearly \$30,000,000 payday under the confirmation agreement.

131. The federal RICO statute makes it actionable for one’s conduct of an enterprise to include “fraud in connection with a [bankruptcy case]”. The Advisers’ Act antifraud provisions require full transparency and accountability to an advisers’ investors and clients and does not require a showing of reliance or materiality. The wire fraud provision likewise is violated when,

as here, the interstate wires are used as part of a “scheme or artifice ... for obtaining money or property by means of false ... pretenses, [or] representations[.]”

132. Accordingly, because Defendants’ conduct violated the wire fraud and mail fraud laws, and the Advisers’ Act antifraud provisions, and their acts and omissions were in connection with the HCM Bankruptcy proceedings under Title 11, they are sufficient to bring such conduct within the purview of the RICO civil action provisions, 18 U.S.C. § 1964.

133. Plaintiffs are thus entitled to damages, treble damages, attorneys’ fees and costs of suit, in addition to all other injunctive or equitable relief to which they are justly entitled.

FIFTH CAUSE OF ACTION
Tortious Interference
(CLO Holdco against HCM)

134. Plaintiff respectfully incorporates the foregoing factual averments as if fully set forth herein and further alleges the following:

135. At all relevant times, HCM owned a 0.6% interest in HCLOF.

136. At all relevant times, Seery and HCM knew that Plaintiff had specific rights in HCLOF under the Company Agreement, § 6.2.

137. Section 6.2 of HCLOF Company agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not an affiliate of the member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

138. HCM, through Seery, tortiously interfered with Plaintiff’s contractual rights with HCLOF by, among other things, diverting the Harbourvest Interests in HCLOF to HCM without giving HCLOF or Plaintiff the option to purchase those assets at the same favorable price that HCM obtained them.

139. HCM and Seery tortiously interfered with Plaintiff's contractual rights with HCLOF by, among other things, misrepresenting the fair market value as \$22.5 million and concealing the current value of those interests.

140. But for HCM and Seery's tortious interference, Plaintiff would have been able to acquire the Harbourvest Interests at a highly favorable price. HCM and Seery's knowledge of the rights and intentional interference with these rights has caused damage to Plaintiff CLO Holdco.

141. Plaintiff is therefore entitled to damages from HCM and Seery, as well as exemplary damages.

VI.

JURY DEMAND

142. Plaintiff demands trial by jury on all claims so triable.

VII.

PRAYER FOR RELIEF

143. Wherefore, for the foregoing reasons, Plaintiffs respectfully pray that the Court enter judgment in its favor and against Defendants, jointly and severally, for:

- a. Actual damages;
- b. Disgorgement;
- c. Treble damages;
- d. Exemplary and punitive damages;
- e. Attorneys' fees and costs as allowed by common law, statute or contract;
- f. A constructive trust to avoid dissipation of assets;
- g. All such other relief to which Plaintiff is justly entitled.

Dated: April 12, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

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Counsel for Plaintiffs

APPENDIX 12

GRANT SCOTT - 1/21/2021

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

4	IN RE:)	
		)	Chapter 11
5	HIGHLAND CAPITAL MANAGEMENT,)	
	L.P.	)	Case No.
6		)	19-34054-sgj11
	Debtor.)	
7	-----)	
8	HIGHLAND CAPITAL MANAGEMENT,)	
	L.P.,)	
	Plaintiff,)	
9		)	Adversary
	vs.	)	Proceeding No.
10		)	21-03000-sgj
11	HIGHLAND CAPITAL MANAGEMENT)	
	FUND ADVISORS, L.P.; NEXPOINT)	
12	ADVISORS, L.P.; HIGHLAND)	
	INCOME FUND; NEXPOINT)	
13	STRATEGIC OPPORTUNITIES FUND;)	
	NEXPOINT CAPITAL, INC.; and)	
14	CLO HoldCo, LTD.,)	
)	
	Defendants.)	
15	-----)	

VIDEOCONFERENCE DEPOSITION OF Grant SCOTT

Thursday, 21st of January, 2021

Reported by: Lisa A. Wheeler, RPR, CRR

Job No: 188910

Page 2

1 GRANT SCOTT - 1/21/2021
 2 January 21, 2021
 3 2:02 p.m.
 4
 5
 6 Videoconference deposition of Grant
 7 SCOTT, pursuant to the Federal Rules of
 8 Civil Procedure before Lisa A. Wheeler,
 9 RPR, CRR, a Notary Public of the State of
 10 North Carolina. The court reporter
 11 reported the proceeding remotely and the
 12 witness was present via videoconference.
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Page 4

1 GRANT SCOTT - 1/21/2021
 2 REMOTE APPEARANCES: (Continued)
 3 KING & SPALDING
 4 Attorneys for Highland CLO Funding, Ltd.
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 7 BY: REBECCA MATSUMURA, ESQ.
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 9 K&L GATES
 10 Attorneys for Highland Capital Management
 11 Fund Advisors, L.P., et al.
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 13 Raleigh, NC 27609
 14 BY: A. LEE HOGEWOOD, III, ESQ.
 15 EMILY MATHER, ESQ.
 16
 17 HELLER DRAPER & HORN
 18 Attorneys for The Dugaboy Investment Trust
 19 and The Get Good Trust
 20 650 Poydras Street
 21 New Orleans, LA 70130
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 23
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Page 3

1 GRANT SCOTT - 1/21/2021
 2 REMOTE APPEARANCES:
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 20 ALYSSA RUSSELL, ESQ.
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Page 5

1 GRANT SCOTT - 1/21/2021
 2 REMOTE APPEARANCES: (Continued)
 3 KANE RUSSELL COLEMAN & LOGAN
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 9 JOHN KANE, ESQ.
 10
 11 ALSO PRESENT: La Asia Canty
 12
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Page 6

1 GRANT SCOTT - 1/21/2021

2 G R A N T S C O T T ,

3 called as a witness, having been duly sworn

4 by a Notary Public, was examined and

5 testified as follows:

6 MR. MORRIS: Good afternoon. My

7 name is John Morris. I'm an attorney with

8 Pachulski Stang Ziehl & Jones, a law firm

9 who represents the debtor in the bankruptcy

10 known as In Re: Highland Capital

11 Management, L.P., and we're here today for

12 the deposition of Grant Scott.

13 Before I begin, I would just like to

14 have confirmation on the record that

15 everybody here who's representing their

16 respective parties agrees that this

17 deposition can be used in evidence in any

18 subsequent hearing, notwithstanding the

19 fact that it's being conducted remotely,

20 and that the witness is not in the same

21 room as the court reporter.

22 Does anybody have an objection to

23 the admissibility of the transcript subject

24 to any reservation of -- of actual

25 objections on the record to using this

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2 the -- the deposition six to eight years ago,

3 do you have a recollection as to what that was

4 about?

5 A. Yeah. It was a -- it was a patent I

6 wrote for Samsung Electronics.

7 Q. Okay.

8 A. And as being the person that I --

9 that wrote it and the patent was in litigation,

10 not -- not being handled by me, but by virtue

11 of having written the patent, I was -- I was

12 deposed --

13 Q. Okay. So you --

14 A. -- on the -- on the patent.

15 Q. Okay. So you've had a little bit of

16 experience with depositions. But just

17 generally speaking, I'm going to ask you a

18 series of questions. It's very important that

19 you allow me to finish my question before you

20 begin your answer.

21 Is that fair?

22 A. Absolutely.

23 Q. And I will certainly try to extend

24 the same courtesy to you, but if I -- if I step

25 on your words, will you let me know that?

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2 transcript going forward?

3 Okay. Nobody's spoken up, so I --

4 I'd like to begin.

5 EXAMINATION

6 BY MR. MORRIS:

7 Q. Good afternoon, Mr. Scott. As I

8 mentioned, my name is John Morris, and we're

9 here for your deposition today. Have you ever

10 been deposed before?

11 A. On two occasions.

12 Q. And -- and when did the -- when did

13 those depositions take place?

14 A. This past October and maybe six to

15 eight years ago.

16 Q. Okay. Can you just tell me

17 generally what the subject matter was of the

18 deposition this past October.

19 A. It was relating to Jim Dondero's --

20 it was a family law issue in -- in -- with

21 respect to Jim Dondero.

22 Q. Okay. And did you testify in a

23 courtroom, or was it a deposition like this?

24 A. I -- right here, actually.

25 Q. Okay. Super. And -- and what about

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2 A. Okay.

3 Q. And if there's anything that I ask

4 that you don't understand, will you let me know

5 that as well?

6 A. Yes. I'll try -- I'll do my best.

7 Q. Okay. So this is a virtual

8 deposition. We're not in the same room. I am

9 going to be showing you documents today. The

10 documents will be put up on the screen. This

11 isn't a -- a trick of any kind. If at any time

12 you see a document up on the screen and either

13 you believe or you have any reason to want to

14 read other portions of the document, will you

15 let me know that?

16 A. Yes, I -- yes, I will. Uh-huh.

17 Q. With respect to the Dondero family

18 matter, I really don't want to go into the

19 substance of that, but I do want to know

20 whether you testified voluntarily in that

21 matter or whether you -- whether you testified

22 pursuant to subpoena.

23 A. I would have done that, but the

24 first time I found out about it was a -- was a

25 subpoena that I received. I wasn't given the

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 2 choice.
 3 Q. Okay. And do you recall who served
 4 the subpoena on you? Actually, let me ask a
 5 different question because I'm really not
 6 interested in the -- in the details.
 7 Did Mr. Dondero serve that subpoena
 8 on you or did somebody else?
 9 A. His counsel for his ex-wife.
 10 Q. Mr. -- so -- so the lawyer acting on
 11 behalf of Mr. Dondero's ex-wife served you with
 12 the subpoena?
 13 A. Correct.
 14 Q. Okay. You're familiar with an
 15 entity called CLO HoldCo Limited; is that
 16 right?
 17 A. Yes.
 18 Q. Do you know what that entity is?
 19 A. Yes.
 20 Q. What -- what -- can you describe for
 21 me what CLO HoldCo Limited is.
 22 A. It's a holding company of assets
 23 including collateralized loan obligation-type
 24 assets. That's a portion of the overall
 25 portfolio. It's an organization that is

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 2 role of director of CLO HoldCo Limited, was
 3 that entity already in existence?
 4 A. I believe so. I'm not certain. I'm
 5 not certain.
 6 Q. What are your duties and
 7 responsibilities as a director of CLO HoldCo
 8 Limited?
 9 A. Well, my day-to-day responsibilities
 10 are to interface with -- with the manager of
 11 the -- of the assets of CLO. I do have some
 12 role in -- with respect to some of the entities
 13 that are -- I -- I have a limited role with
 14 respect to a subset of the charitable
 15 foundations that receive money from the CLO
 16 HoldCo structure, which is commonly referred to
 17 as the DAF. There's -- sometimes those are
 18 used interchangeably.
 19 Q. What terms are used interchangeably?
 20 A. Well, the DAF and CLO HoldCo are
 21 frequently -- by -- by other people they're --
 22 it's the short -- it's the -- I guess it's
 23 easier to use the acronym DAF than CLO HoldCo
 24 Limited, so I'm frequently having to -- there
 25 is a DAF entity so -- that's above -- above CLO

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 2 integrated with other entities as part of a
 3 charitable -- loosely what we -- what we refer
 4 to as a charitable foundation equivalent.
 5 Yeah.
 6 Q. All right. We'll -- we'll get into
 7 some detail about the corporate structure in a
 8 moment. Do you personally play any role at CLO
 9 HoldCo Limited?
 10 A. Yes. My technical title is
 11 director, but I -- I don't necessarily know
 12 specifically what that title means other than I
 13 act, as I understand it, as -- as a trustee for
 14 those -- for those assets.
 15 Q. And where did you get that
 16 understanding?
 17 A. Approximately ten years ago from the
 18 group that -- that set up the hierarchy.
 19 Q. And which group set up the
 20 hierarchy?
 21 A. Employees at Jim Don- -- as I
 22 understand it, employees of Highland along with
 23 outside counsel, as I understand it, and also,
 24 I guess, input from -- from Jim Dondero.
 25 Q. At the time that you assumed the

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 2 in terms of the management, and so it's
 3 frequently confusing and I'm having to clarify
 4 at times which entity we're talking about,
 5 but -- but other parties frequently use those
 6 terms interchangeably.
 7 Q. Okay.
 8 MR. MORRIS: Lisa, when we use the
 9 phrase DAF, because you'll hear that a lot,
 10 it's all caps, D-A-F.
 11 BY MR. MORRIS:
 12 Q. You mentioned that you interface
 13 with the manager of assets of CLOs. Do I have
 14 that right?
 15 A. Well, of all the assets.
 16 Q. Okay. Who is the manager of the
 17 assets that you're referring to?
 18 A. Highland Capital Management.
 19 Q. Highland Capital Management manages
 20 all of the assets -- withdrawn.
 21 Is it your understanding that
 22 Highland Capital Management manages all the
 23 assets that are owned by CLO HoldCo Limited?
 24 A. Yes.
 25 Q. Who makes the investment decisions

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 2 on behalf of CLO HoldCo Limited?
 3 A. Highland -- those managers that you
 4 mentioned.
 5 Q. Okay. I didn't mention anybody in
 6 particular.
 7 A. Oh, I'm sorry. The -- the -- the
 8 money manager -- could you repeat that
 9 question? I'm sorry. I'm so sorry.
 10 Q. Can you just -- can you just
 11 identify for me the person who makes investment
 12 decisions on behalf of CLO HoldCo Limited.
 13 A. It's -- well, it's -- it's persons
 14 as I understand it. I inter- -- interface with
 15 a -- with a group, but it's -- it's Highland
 16 Capital employee -- Highland Capital Management
 17 employees.
 18 Q. Okay. Can you just name any of
 19 them, please.
 20 A. Hunter Covitz, Jim Dondero. Mark
 21 Okada's no longer there, but I believe he was
 22 involved, and there are others that I interface
 23 with.
 24 Q. Can you -- can you recall the name
 25 of anybody other than Mr. Okada and Mr. Dondero

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 2 Q. Is it fair to say that you do not
 3 make decisions, investment decisions, on behalf
 4 of CLO HoldCo Limited?
 5 A. Yes.
 6 Q. Does CLO HoldCo Limited have any
 7 employees that you know of?
 8 A. No.
 9 Q. Does CLO HoldCo have any --
 10 withdrawn.
 11 Does CLO HoldCo Limited have any
 12 officers that you know of?
 13 A. No.
 14 Q. So am I correct that you're the only
 15 representative in the world of CLO HoldCo in
 16 terms of being a director, officer, or
 17 employee?
 18 A. Yes.
 19 Q. Do you receive any compensation from
 20 CLO HoldCo for your services as the director?
 21 A. I do now.
 22 Q. When did that begin?
 23 A. I believe in the middle of 2012.
 24 Q. Okay. And had you served as a
 25 director prior to that time without

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 2 and Mr. Covitz?
 3 A. Yeah. Over the years I've worked
 4 with Tim Cournoyer, Thomas Surgent, but I
 5 think -- I think that's the core -- the core
 6 group.
 7 Q. All right. And is there anybody
 8 within that core group who has the final
 9 decision-making authority concerning the
 10 investments in CLO HoldCo Limited?
 11 A. I don't -- I don't know. I'm sorry.
 12 Say that again. I just want to -- I'm sorry.
 13 I'm trying to be -- I'm not trying to -- I'm
 14 trying to be --
 15 Q. I understand. And --
 16 A. Sorry. If you could just repeat it.
 17 Q. Sure. Is there any particular
 18 person who has the final decision-making
 19 authority for investments that are being made
 20 on behalf of CLO HoldCo Limited?
 21 A. Amongst that group I am -- I am not
 22 sure.
 23 Q. Okay. So are there any other
 24 directors of CLO HoldCo besides yourself?
 25 A. No.

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 2 compensation?
 3 A. Yes.
 4 Q. And have you been the sole director
 5 of CLO HoldCo Limited since the time of your
 6 appointment approximately ten years ago?
 7 A. Yes.
 8 Q. Nobody else has served in that
 9 capacity; is that right?
 10 A. That is correct.
 11 Q. There have been no employees or
 12 officers of that entity during the time that
 13 you've served as director, correct?
 14 A. Yes.
 15 Q. Do you know who formed CLO HoldCo
 16 Limited?
 17 A. I do not.
 18 Q. Do you know why CLO HoldCo Limited
 19 was formed?
 20 A. I believe so.
 21 Q. Can you explain to me why -- your
 22 understanding as to why CLO HoldCo was formed.
 23 A. So as I understand things, Jim
 24 Dondero wanted to create a charitable
 25 foundation-like entity or entities, and tax

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 2 people particularly, I guess, finance people,
 3 lawyers, they created this network of entities
 4 to carry out that charitable goal. At one
 5 point, I thought it was a novel type of
 6 institution, if you want to call it, or a
 7 novel -- novel type of group of entities, but
 8 over time, I came to understand that although
 9 not cookie cutter, it -- it follows a general
 10 arrangement of entities for legal and tax
 11 purposes, compliance purposes, IRS purposes,
 12 various insulating purposes to maintain -- or
 13 to meet the necessary requisites to carry out
 14 that charitable function.
 15 Q. When did you come to that
 16 understanding?
 17 A. Over the last couple of years. I
 18 periodically have to refresh my recollection.
 19 It's -- it's fairly complex.
 20 Q. Okay. In your capacity as the sole
 21 director of CLO HoldCo Limited, do you report
 22 to anybody?
 23 A. No.
 24 Q. Other than interfacing with the
 25 manager of the assets of the CLO, do you have

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 2 most of my time is spent working with the
 3 various compliance and other people for
 4 addressing issues of get- -- you know, getting
 5 taxes filed. It runs -- it runs the gamut of
 6 every aspect of the organization being -- being
 7 handled by Highland.
 8 Q. Okay.
 9 A. You know, unlike -- unlike my
 10 financial -- unlike a financial planner that
 11 might, you know, manage assets, they -- they do
 12 it all, and I interface with them regularly to
 13 maintain -- mostly to deal with compliance
 14 issues.
 15 Q. Who's the com- -- is there a person
 16 who's in charge of compliance?
 17 A. I believe Thomas Surgent. I
 18 mentioned him. I believe he also has that
 19 role, but it's -- you know, they do have
 20 turnover, I guess, in that. It's -- I guess
 21 they refer to it as the back office. I've
 22 heard that term be used, but -- basically, it's
 23 a large number of people that have changed over
 24 time, but it's -- it's more -- I believe it's
 25 more than one collectively.

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 2 any other duties and responsibilities as a
 3 director of CLO HoldCo Limited?
 4 A. Yes. Sorry. My mouth is a little
 5 dry.
 6 Q. By the way, if you ever need to take
 7 a break, just let me know.
 8 A. Okay. Thank you. Now I forgot your
 9 question. The -- the -- the --
 10 Q. I understand.
 11 A. The answer -- the -- the answer is
 12 yes. I -- why don't you ask -- ask your
 13 question again. I'm sorry.
 14 Q. Sure. Other than interfacing with
 15 the manager of the assets of the CLO, do you
 16 have any other duties and responsibilities as
 17 the sole director of CLO HoldCo Limited?
 18 A. Yes. So Highland Capital because of
 19 its -- the way it's set up to manage or service
 20 CLO HoldCo and the DAF, it has a relatively
 21 large group of people that I have to interface
 22 with to do everything from -- everything from
 23 soup to nuts. Finances and the money
 24 management is one aspect, but most of my
 25 time -- on a day-to-day or week-to-week basis,

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 2 Q. How much time do you devote -- you
 3 know, can you estimate either on a weekly or a
 4 monthly basis how many -- how much time do you
 5 devote to serving as the director of CLO HoldCo
 6 Limited?
 7 A. I thought about that. Well, let --
 8 let's put it this way: There was the
 9 prebankruptcy time I spent per day, and then
 10 there was the postbankruptcy time I've spent
 11 per -- per -- or per week -- excuse me, or
 12 per -- I've estimated it as probably a day --
 13 it's so intermittent it's -- it's hard, okay?
 14 It's -- I don't dedicate my Mondays to only
 15 doing that and then Tuesday through Friday I
 16 don't, right? I -- it's -- I have to piece
 17 together everything that occurs during the
 18 week. There might be some weeks where I don't
 19 have any contact. There might be every day of
 20 the week I have multiple contact. There may be
 21 days where from morning to night there is so
 22 much contact, it precludes me from doing
 23 anything else meaningfully. So -- but I would
 24 estimate it's probably three or four -- maybe
 25 three days, four days a month when things are

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 2 going well.
 3 Q. And -- and I think you -- you
 4 testified just now that there was kind of a
 5 difference between prebankruptcy and
 6 postbankruptcy. Do I have that right?
 7 A. Yes.
 8 Q. And can you tell me -- is it fair to
 9 say that before the bankruptcy, you didn't
 10 devote much time to CLO HoldCo, or do I have
 11 that wrong?
 12 A. Well, I -- just the time that --
 13 that I mentioned just -- I'm sorry. The -- the
 14 time I just mentioned now when you asked me,
 15 that was the pre period. Excuse me. I haven't
 16 talked about the postbankruptcy period.
 17 Q. So are you -- are you -- are you
 18 devoting more time or less time since the
 19 bankruptcy?
 20 A. Much more.
 21 Q. Much more since the bankruptcy
 22 filing?
 23 A. Yes.
 24 Q. And so why did the bankruptcy filing
 25 cause you to spend more time as a director of

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 2 A. It was various obligations that were
 3 owed to -- to CLO, things that had been
 4 previously donated or -- or agreements that had
 5 been set up that transferred certain assets,
 6 and it was basically the -- the -- the amounts
 7 were derived from those sorts of transactions.
 8 Q. Okay. You're a patent lawyer; is
 9 that right?
 10 A. I -- I'm exclusively a patent
 11 attorney, yes.
 12 Q. Have you been a patent lawyer on an
 13 exclusive basis since the time you graduated
 14 from law school?
 15 A. From law school, yes.
 16 Q. Can you just describe for me
 17 generally your educational background.
 18 A. So I'm an electrical engineer by
 19 training. I graduated from the University of
 20 Virginia in 1984. I then went to graduate
 21 school at the University of Illinois. I
 22 received my master's degree in 1986, and then I
 23 immediately joined IBM Research at the Thomas
 24 Watson Institute in New York where I was a --
 25 my title was research scientist, but I was -- I

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 2 CLO HoldCo Limited?
 3 A. Well, initially, and this would
 4 be -- this would be late 2019, it was --
 5 aft- -- after the bankruptcy was -- was filed
 6 and I obtained counsel, who are on the phone
 7 now -- or in this deposition now, excuse me,
 8 that was -- that transition occurred because
 9 CLO was a debtor -- excuse me, a creditor to --
 10 to the debtor and had to take steps to
 11 establish its -- its claim. So if I understand
 12 the -- things correctly, the -- the debtor
 13 identified as part of the filing -- I don't
 14 know how bankruptcy works, but if I under- --
 15 if my recollection is correct, there's a
 16 hierarchy from biggest to smallest, and we were
 17 relatively high up. And when I say we or I,
 18 I -- I just mean CLO was relatively high up.
 19 And so initially, for the first period of so
 20 many months, the -- the exclusive focus was on
 21 our position as a creditor -- a creditor having
 22 a certain claim against a debtor.
 23 Q. Can you describe for me your
 24 understanding of the nature of the claim
 25 against the debtor.

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 2 guess I was more of a research engineer, if
 3 that matters. And I did that until I
 4 transitioned -- or I began law school in the
 5 fall of 1988, and then I graduated law school
 6 in May of 1991.
 7 Q. And where did you go to law school?
 8 A. University of North Carolina.
 9 Q. Do you have any formal training in
 10 investing or finance?
 11 A. I do not.
 12 Q. Do you hold yourself out as an
 13 expert in any field of investment?
 14 A. None -- none at all.
 15 Q. Have you had any formal training
 16 with respect to compliance issues? You
 17 mentioned compliance issues earlier.
 18 A. No.
 19 Q. Now, do you have any knowledge about
 20 compliance rules or regulations?
 21 A. Minimal that I've -- that have
 22 occurred organically but -- but generally, no.
 23 Q. You don't hold yourself out as an
 24 expert in com- -- in the area of compliance,
 25 correct?

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2 A. No. No. I'm -- no.

3 Q. Do you have any particular

4 investment philosophy or strategy?

5 MR. CLARK: I'm going to object to

6 the form of the question. And, John,

7 can -- can we get an agreement that -- I

8 know you were objecting just simply on the

9 form basis yesterday -- that objection to

10 form is sufficient today?

11 MR. MORRIS: Sure.

12 MR. CLARK: Okay. And I object to

13 form. Grant, you can answer to the extent

14 you can.

15 THE WITNESS: I forget the question

16 now that you interrupted. I'm sorry.

17 BY MR. MORRIS:

18 Q. So -- so -- and I'm going to ask a

19 different question because in hindsight, that's

20 a good objection.

21 In your capacity as the director

22 of -- withdrawn.

23 Do the employees of Highland that

24 you identified earlier, do they make investment

25 decisions on behalf of CLO HoldCo Limited

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2 don't recall.

3 Q. Okay. So -- withdrawn. I'll --

4 I'll go on.

5 How did you come to be the director

6 of CLO HoldCo?

7 A. I was asked either by Jim Dondero

8 or -- directly or indirectly by -- by Jim

9 Dondero.

10 Q. And who is Jim Dondero?

11 A. Well, at the time, he was the head

12 or one of the heads of Highland Capital

13 Management, a friend of mine.

14 Q. How long have you known Mr. Dondero?

15 A. Since high school so that -- 1976.

16 Q. Where did you and Mr. Dondero grow

17 up?

18 A. In northern New Jersey.

19 Q. Do you consider him among the

20 closest friends you have?

21 A. I think he is my closest friend.

22 Q. Did you two go to college together?

23 A. We actually -- for the last -- last

24 two years I was at UVA, University of Virginia,

25 excuse me, he and I were -- were at UVA. So we

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2 without your prior knowledge on occasion?

3 A. On occasion, they do.

4 Q. So there's no rule that your prior

5 approval is needed before investments are made,

6 right?

7 A. I don't know whether they have an

8 internal guideline as to the amount that

9 triggers when they get in touch with me or

10 whether it's a new -- a change, something new,

11 or -- versus recurring. So I don't -- I don't

12 know what they use internally for that metric.

13 Q. Okay. Are you aware of any

14 guideline that was ever used by the Highland

15 employees whereby they were required to obtain

16 your consent prior to effectuating transactions

17 on behalf of CLO HoldCo Limited?

18 A. I understand there was one or more,

19 but I do not know that.

20 Q. Okay. Did you ever see such a

21 policy or list of rules that would require your

22 prior consent before the Highland employees

23 effectuated transactions on behalf of CLO

24 HoldCo Limited?

25 A. Possibly some time ago, but I -- I

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2 did not start out at UVA initially, but -- but

3 we both transferred -- I transferred my

4 sophomore year. I was actually a chemical

5 engineer at the University of Delaware when I

6 transferred in, and then he transferred in his

7 junior year. So we were there at college for

8 two years.

9 Q. And -- and based on your

10 relationship with him, is it your understanding

11 that one of the reasons he chose to transfer to

12 UVA is -- is to -- because you were there?

13 A. Oh, no. He transferred -- he --

14 he -- he transferred there because of the -- so

15 he went to the University of -- he -- he went

16 to Virginia Tech University, which is more

17 known as being an engineering school, which I

18 might have wanted to go to, and less a finance

19 business school. And if I understand things

20 correctly, and I believe I do, he transferred

21 to UVA because of the well-known

22 business/finance program, accounting program.

23 Q. And did you -- did you and

24 Mr. Dondero become roommates at UVA?

25 A. We weren't roommates, but we lived

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 2 in the -- we were housemates. I'm sorry. We
 3 were housemates.
 4 Q. So you shared a house together. How
 5 would you describe your relationship with
 6 Mr. Dondero today?
 7 A. It's -- it's been strained a while,
 8 for some time, but -- but generally, very good.
 9 Good to very good.
 10 Q. Without -- without getting personal
 11 here, can you just generally identify the
 12 source of the strain that you described.
 13 A. This -- I think it would be fair to
 14 say that this bankruptcy, particularly events
 15 in 2020 so some months after the bankruptcy was
 16 declared, things have become -- we -- we still
 17 have a close friendship, but -- but things
 18 are -- are a bit -- are a bit more difficult.
 19 Q. Were you ever married?
 20 A. I've never been married.
 21 Q. Did you serve as Mr. Dondero's best
 22 man at his wedding?
 23 A. I did.
 24 Q. Is it fair to say that -- that
 25 Mr. Dondero trusts you?

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 2 course of those 45 years, Mr. Dondero has
 3 shared confidential information with you that
 4 he didn't want you to reveal publicly to other
 5 people?
 6 A. Yes.
 7 Q. And is it your understanding that
 8 because of the nature of your relationship with
 9 him, he asked you to serve as the director of
 10 CLO HoldCo Limited?
 11 A. Yes. I believe it's because he --
 12 he trusted -- trusted me with -- with assets
 13 relating to his charitable vision. I -- I --
 14 yeah. Yes.
 15 Q. And is it your understanding that he
 16 thought you would help him execute his
 17 charitable vision?
 18 A. That was the point of attraction
 19 initially. It wasn't for money. I wasn't
 20 being paid. That was -- the charitable mission
 21 was the attraction.
 22 Q. Does Mr. Dondero play any role in
 23 the management of the CLO HoldCo Limited asset
 24 pool?
 25 MR. CLARK: Objection, form.

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 2 MR. CLARK: Objection, form.
 3 BY MR. MORRIS:
 4 Q. Withdrawn.
 5 Do you believe that Mr. Dondero
 6 trusts you?
 7 A. I do.
 8 Q. Over the years, is it fair to say
 9 that Mr. Dondero has confided in you?
 10 MR. CLARK: Objection, form.
 11 BY MR. MORRIS:
 12 Q. You can answer if you understand it.
 13 A. I think so.
 14 Q. I -- I -- what's your answer? You
 15 think so?
 16 A. Maybe you can de- -- I think of
 17 confide as -- could you define confide, please.
 18 Q. Sure. Is it -- is it fair to say
 19 that over the -- let me -- you've known
 20 Mr. Dondero for almost 45 years, right?
 21 A. Yes.
 22 Q. And you consider him to be your
 23 closest friend in the world, right?
 24 A. Yes.
 25 Q. And is it fair to say over the

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 2 A. I'm sorry. Could you repeat that?
 3 My -- my screen went small and then big again.
 4 I was distracted.
 5 Q. What role does Mr. Dondero play with
 6 respect to the management of the CLO HoldCo
 7 Limited asset pool?
 8 MR. CLARK: Objection, form.
 9 A. He is with the company that manages
 10 that asset pool. He's one of the people I
 11 named previously as managing those assets.
 12 Q. He is -- he -- he is the -- do you
 13 understand that he has the final
 14 decision-making power with respect to the
 15 management of the assets that are held by CLO
 16 HoldCo Limited?
 17 MR. CLARK: Objection, form.
 18 A. I believe I anseled -- answered that
 19 previously. I -- I don't know who has -- for
 20 certainty I do not know who has that within
 21 that company. I don't. If -- if -- I -- I
 22 don't know, consistent with my prior answer.
 23 Q. Did you ever ask anybody who had the
 24 final decision-making authority for investments
 25 on behalf of CLO HoldCo Limited?

<p style="text-align: right;">Page 34</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. I -- I did not.</p> <p>3 Q. Did you ever make a decision on</p> <p>4 behalf of -- withdrawn.</p> <p>5 In your capacity as a director --</p> <p>6 withdrawn.</p> <p>7 In your capacity as the sole</p> <p>8 director of CLO HoldCo Limited, can you think</p> <p>9 of any decision that you've ever made that</p> <p>10 Mr. Dondero disagreed with?</p> <p>11 A. Since -- prior to the bankruptcy,</p> <p>12 no, not that I'm aware of.</p> <p>13 Q. And since the bankruptcy?</p> <p>14 A. There are decisions that I've made</p> <p>15 that he's disagreed with.</p> <p>16 Q. Can you identify them?</p> <p>17 A. Yes.</p> <p>18 Q. Please do so.</p> <p>19 A. Okay. So the reason I'm pausing is</p> <p>20 I'm trying to put these in chronological order</p> <p>21 and, at the same time, identify maybe some of</p> <p>22 the more important ones versus the lesser</p> <p>23 important ones. One of the decisions I made</p> <p>24 related to a request that I received from the</p> <p>25 independent board of Highland. I don't know</p>	<p style="text-align: right;">Page 35</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 how the request was transmitted to me, but I</p> <p>3 believe the way it played out is as follows: I</p> <p>4 believe I was asked to call Jim Seery, and the</p> <p>5 other -- and Russell Nelms, and the third</p> <p>6 independent director, I believe his name is</p> <p>7 John. I -- I forget right now what his last</p> <p>8 name is. They were in New York, said they were</p> <p>9 in a conference room. I called in. They were</p> <p>10 very pleasant. They identified who they were,</p> <p>11 and they had a request, and the request was</p> <p>12 that I agree to a transfer -- or that I -- that</p> <p>13 I agree to allow certain assets that were not</p> <p>14 Highland's assets but they were CLO's as- --</p> <p>15 assets -- apparently, there was no dispute</p> <p>16 about that at any point in time, but that I</p> <p>17 agree to allow certain assets that were due CLO</p> <p>18 to be transferred to the registry of the</p> <p>19 bankruptcy court. And either on that call I</p> <p>20 immediately agreed or ended the call, called my</p> <p>21 attorney, and then immediately agreed. It was</p> <p>22 a very -- I accommodated the request quickly.</p> <p>23 Q. Okay. And can you just tell me at</p> <p>24 what point in time you spoke with Mr. Dondero,</p> <p>25 and what did he say that you recall?</p>
<p style="text-align: right;">Page 36</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. I don't know when he became aware of</p> <p>3 that decision. I'm not sure I ever volunteered</p> <p>4 that the decision was even made, but at some</p> <p>5 point, it became an issue because he found out</p> <p>6 through -- if I understand the sequence of</p> <p>7 events correctly, he found out possibly through</p> <p>8 his counsel because there was ultimately</p> <p>9 litigation about that issue. It became known</p> <p>10 to everyone at some point what I had done, I --</p> <p>11 I think. And subsequent to that, it became an</p> <p>12 issue because of CLO HoldCo having fairly</p> <p>13 significant cash flow issues with respect to</p> <p>14 its expenses and obligations, including payment</p> <p>15 of management fees as well as some of the</p> <p>16 scheduled charitable giving that was -- that</p> <p>17 was by contract already predefined. My</p> <p>18 decision to tuck that money -- or to agree</p> <p>19 to -- my agreement to let that money be tucked</p> <p>20 away created some -- created some -- created</p> <p>21 some problems --</p> <p>22 Q. And -- and --</p> <p>23 A. -- for CLO HoldCo.</p> <p>24 Q. Okay. And I just want you to focus</p> <p>25 specifically on my question, and that is, what</p>	<p style="text-align: right;">Page 37</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 did Mr. Dondero say to you that -- that causes</p> <p>3 you to testify as you did, that this is one</p> <p>4 issue that he didn't agree with?</p> <p>5 A. I believe his concern was that</p> <p>6 because it was money that was undisputably to</p> <p>7 flow to CLO HoldCo that -- which had many, many</p> <p>8 other nonliquid assets -- this was a form of a</p> <p>9 liquid asset. It was cash in effect, proceeds.</p> <p>10 -- that the money should have been allowed to</p> <p>11 flow to be available for obligations. He</p> <p>12 didn't under- -- I -- I -- I don't know what he</p> <p>13 was thinking, but the -- the issue was that the</p> <p>14 decision to put it into escrow was -- was --</p> <p>15 was in- -- incorrect, that there was no basis</p> <p>16 for it.</p> <p>17 Q. That -- that's an issue where after</p> <p>18 learning of your decision, he didn't agree with</p> <p>19 it; is that fair?</p> <p>20 A. That's right.</p> <p>21 Q. Okay. Can you think of any decision</p> <p>22 that you've ever made on behalf of CLO HoldCo</p> <p>23 Limited where Mr. Dondero had advance knowledge</p> <p>24 of what you were going to do and he objected to</p> <p>25 it, but you nevertheless overruled his</p>

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 2 objection and went ahead and did what -- did
 3 what you thought was right?
 4 A. Okay. Let me -- let me -- I have --
 5 I'm sorry.
 6 Q. We're here.
 7 A. Oh, I'm sorry. I'm having some
 8 issues with my screen. So that may have
 9 occurred with respect to the original proof of
 10 claim. Then there was a subsequent amendment
 11 to the proof of claim, and I -- I believe it --
 12 I believe that he might have been aware of both
 13 of those and was in disagreement with -- with
 14 those. But after working with my attorney, we
 15 just -- you know, we did what we thought was
 16 right, and I still think what we did was right.
 17 There was an issue with respect to Har- --
 18 HarbourVest that occurred relatively recently
 19 where he objected to a decision that I had
 20 made. As I understand it, I could have
 21 contacted my attorney and changed the decision,
 22 but I didn't, and I still think that was the
 23 right decision.
 24 We have filed plan objections. I
 25 can't say if he has any -- in that regard, I --

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 2 A. So we had to interface with Highland
 3 employees at some point to get information to
 4 support our proof of claim, and my guess, and
 5 it's just a guess, is that he was aware of
 6 those inquiries. I -- I'm sorry. I shouldn't
 7 speculate. I don't know. But he -- with
 8 respect to the original proof of claim, I'm --
 9 I'm not aware of what specifically he was
 10 objecting to or was -- thought should have been
 11 different, but the -- with respect to the
 12 amended proof of claim, which reduced the
 13 original proof of claim to zero, I think that's
 14 where he had a -- an issue.
 15 Q. And did you speak with him about
 16 that topic prior to the time the amended claim
 17 was filed, or did you only speak with him after
 18 it was filed?
 19 A. I'm not sure the timing of that.
 20 Q. And with respect to HarbourVest, did
 21 he ask you to object to the settlement on
 22 behalf of CLO HoldCo Limited, and is that
 23 something that you declined to do?
 24 MR. CLARK: Objection, form.
 25 A. I'm -- I'm sorry. I was confused

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 2 I -- I don't know what his thoughts are on
 3 objections. They would not have been
 4 communicated with -- by me to him, but my
 5 attorney might have consulted with his
 6 attorney, and there -- they may know what that
 7 difference is, but I -- that was just another
 8 big decision. I -- I -- maybe that --
 9 Q. All right. Let me see if I can --
 10 let me see if I can summarize this. So two
 11 proofs of claim. Is it fair to say that
 12 Mr. Dondero saw those proofs of claim before
 13 they were filed?
 14 MR. CLARK: Objection, form.
 15 BY MR. MORRIS:
 16 Q. Withdrawn.
 17 A. It --
 18 Q. Do -- do you know whether
 19 Mr. Dondero saw the proofs of claim before they
 20 were filed?
 21 A. I don't believe he did.
 22 Q. What -- what steps in filing the
 23 proofs of claim did he object to that you
 24 overruled? Did he think there was -- something
 25 should be different about them?

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 2 with the word. Could you please repeat that?
 3 Q. Yes. You mentioned HarbourVest
 4 before, right?
 5 A. Yes.
 6 Q. And you mentioned that there was an
 7 issue with Mr. Dondero and you concerning
 8 HarbourVest; is that right?
 9 A. Yes.
 10 Q. And did that have to do with whether
 11 or not CLO HoldCo Limited would -- would object
 12 to the debtor's motion to get the HarbourVest
 13 settlement approved?
 14 A. Would -- would get the
 15 HarbourVest --
 16 Q. Settlement approved by the court.
 17 A. I'm not trying to be difficult.
 18 I'm -- I'm -- could you just repeat that one
 19 more time? I'm --
 20 Q. What was -- what was --
 21 A. There was --
 22 Q. Let me try again.
 23 A. Okay.
 24 Q. What was the issue with respect to
 25 HarbourVest that he objected to and -- and you

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2 overrode his objection and did what you thought

3 was right anyway?

4 A. Okay. Okay. That's -- that's

5 easier for me to understand. I'm sorry. So I

6 had worked with my attorney or he did the work

7 and consulted with -- we consulted, but we had

8 filed an objection, motion objecting to the

9 settlement, if I understand the terminology and

10 nomenclature correctly. Okay. He had -- we

11 had come to an agreement that we had a very

12 valid argument. That argument was evidenced

13 by, I guess it was, our motion that was

14 submitted to the court. On the day of the

15 hearing to resolve this issue, we pulled our

16 request, and that was because I believed it did

17 not have a good-faith basis in law to move

18 forward on.

19 Q. And did you discuss that issue with

20 Mr. Dondero before informing the court that CLO

21 HoldCo Limited was withdrawing its objection,

22 or did he learn about that for the first time

23 during the hearing --

24 MR. CLARK: Objection, form.

25 BY MR. MORRIS:

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2 A. -- thought, okay?

3 THE REPORTER: I didn't --

4 A. Okay. So he --

5 Q. It was a recommendation.

6 A. Yeah. So he -- he called me with a

7 recommendation. It was highly urgent. You

8 know, I was coming out of the men's room, had

9 my phone with me. I got the call.

10 MR. CLARK: Hey, Grant, I -- Grant,

11 I just want to caution you not to -- to --

12 and I don't think counsel is looking for

13 this but not to disclose the -- the

14 substance of any of your communications

15 with counsel, okay?

16 THE WITNESS: Thank you.

17 A. So --

18 THE WITNESS: Thank you. I'm -- I'm

19 sorry.

20 BY MR. MORRIS:

21 Q. It's -- it's really a very simple

22 question. Do you recall --

23 A. He made a recommendation. I -- I --

24 I think I can answer your question without

25 going off tangent. I'm sorry. So he -- my

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2 Q. -- if you know?

3 A. I -- I understand that he learned it

4 during the hearing. I don't know the -- I -- I

5 don't know the -- whether there was any -- I --

6 I don't know for certain on the second half of

7 your question.

8 Q. Let me -- let me try it -- let me

9 try it this way: Did you speak with

10 Mr. Dondero about your decision to withdraw the

11 objection to the HarbourVest settlement prior

12 to the time your counsel made the announcement

13 in court?

14 A. I don't -- I don't believe so. No.

15 No. No. I'm sorry. No.

16 Q. And did --

17 A. Okay. No. Here -- here's where

18 I'm -- I can clarify, okay? I'm sorry. I can

19 clarify.

20 Q. That's all right.

21 A. I gave the decision to my

22 attorney -- I -- I agreed with the

23 recommendation of my attorney, okay? It wasn't

24 my --

25 Q. Did you have a good --

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2 attorney made a recommendation. I agreed with

3 it. We with- -- I -- I told him to withdraw --

4 or I authorized him to withdraw.

5 Q. Okay.

6 A. Then I received a communication, and

7 I -- I guess the most likely scenario is the

8 motion had been withdrawn by the time Jim

9 Dondero found out.

10 Q. And -- and did he write to you, or

11 did he call you? Did he send you a text?

12 A. He called me.

13 Q. What did he say?

14 A. He was asking why, and I explained,

15 and I said I agreed with the decision and I was

16 sticking with the decision.

17 Q. Let's just -- let's just move on to

18 a new topic, and let's talk about the structure

19 of -- of CLO HoldCo. Are you generally

20 familiar with the ownership structure of CLO

21 HoldCo?

22 A. Yeah. I mean, in terms --

23 Q. Are -- are you -- are you generally

24 familiar with it? It's not a test. I'm just

25 asking do you have a general familiarity --

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2 A. With CLO HoldCo or the entities

3 associated with CLO HoldCo?

4 Q. The latter.

5 A. Yes, I believe so.

6 Q. All right. I've prepared what's

7 called a demonstrative exhibit. It's just --

8 A. Yes.

9 Q. -- just -- it's a document that, I

10 think, reflects facts, but I want to ask you

11 about it.

12 MR. MORRIS: La Asia, can we please

13 put up Exhibit 1.

14 (SCOTT EXHIBIT 1, Organizational

15 Structure: CLO HoldCo, Ltd., was marked

16 for identification.)

17 BY MR. MORRIS:

18 Q. Okay. Can you see that, Mr. Scott?

19 A. Yes, I can.

20 Q. Okay. So I think I took the

21 information from resolutions that were attached

22 to the CLO HoldCo proof of claim, and that's

23 why you got that little footnote there at the

24 bottom of the page. But let's start in the

25 lower right-hand corner and see if this chart

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2 particular structure, to the best of your

3 knowledge?

4 A. I -- I didn't -- I'm sorry. I

5 didn't hear you very well.

6 Q. To the best of your knowledge, did

7 Mr. Dondero make the decisions to establish the

8 structure that's reflected on this page?

9 A. Oh, I don't know if he made the

10 decision to establish this structure, although

11 it's -- it's -- I'm sorry. Strike that. I --

12 if -- if what you're saying is did he approve

13 of this structure, to my knowledge, yes.

14 Q. Okay. Do you hold any position with

15 respect to Charitable DAF Fund, L.P.?

16 A. I -- I -- your chart says no. I --

17 I -- I thought I had a role there, too.

18 Q. I don't know. I don't have

19 information on that. That's why I'm asking the

20 question.

21 A. I -- I -- I believe -- yes, I

22 believe I have the same role as I do in -- in

23 CLO HoldCo.

24 Q. And that would be director?

25 A. Yes.

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2 comports with your understanding of the facts.

3 Do you know that CLO HoldCo Limited

4 was formed in the Cayman Islands?

5 A. Yes.

6 Q. And to the best of your knowledge,

7 is CLO HoldCo Limited 100 percent owned by the

8 Charitable DAF Fund, L.P.? If you're not sure,

9 just say you're not sure if you don't know.

10 It's not a test.

11 A. So the -- the -- the familiarity

12 I -- I'm -- I'm familiar with the different --

13 I'm confused with the arrangement of the boxes

14 and the ownership interest versus managerial

15 interest. I believe that's -- that's right.

16 Q. Okay. And -- and you're the sole

17 director of CLO HoldCo Limited, right?

18 A. Yes.

19 Q. And this whole structure was -- the

20 idea for this structure, to the best of your

21 knowledge, was to implement Mr. Dondero's plan

22 for charitable giving; is that fair?

23 A. Yes. Ultimately, yes.

24 Q. And is it fair to say then that

25 he -- he made the decision to establish this

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2 Q. And to the best of your knowledge,

3 is the Charitable DAF GP, LLC, the general

4 partner of Charitable DAF Fund, L.P.?

5 A. Yes.

6 Q. And is it your understanding that

7 you are the managing member of Charitable DAF

8 GP, LLC?

9 A. Yes.

10 Q. Does Charitable DAF GP, LLC, have

11 any employees?

12 A. No.

13 Q. Does Charitable DAF GP, LLC, have

14 any officers or directors?

15 A. No.

16 Q. Are you the only person affiliated

17 with Charitable DAF GP, LLC, to the best of

18 your --

19 A. I believe so.

20 Q. Do you receive any compensation for

21 serving as the managing member of Charitable

22 DAF GP, LLC?

23 A. No. The -- I don't interact with it

24 very often. It's -- no, I don't receive any

25 compensation.

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2 Q. Can you tell me in your capacity as

3 the managing member of Charitable DAF GP, LLC,

4 what's the nature of that entity's business?

5 A. It -- it doesn't perform any

6 day-to-day operations. My understanding is --

7 is that it's -- it's there for purposes of

8 compliance. I can't recall the last time I had

9 any activity with respect to that.

10 Q. How about the Charitable DAF Fund,

11 L.P.? I apologize if I've asked you these

12 questions.

13 A. It -- it's the same. I -- I -- my

14 activity is almost exclusively CLO HoldCo.

15 Q. All right. Let me just ask the

16 questions nevertheless. Does Charitable DAF

17 Fund, L.P., have any employees?

18 A. Employees? No.

19 Q. Does it have any officers and

20 directors?

21 A. No.

22 Q. Are you the sole director of

23 Charitable DAF Fund, L.P.?

24 A. Yes, I believe so.

25 Q. So if we -- if we put under

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2 Q. And did Mr. Dondero ask you to serve

3 as the director of Charitable DAF, L.P. --

4 withdrawn.

5 Did Mr. Dondero ask you to serve as

6 director of Charitable DAF Fund, L.P.?

7 A. Yes.

8 Q. To the best of your knowledge, does

9 Charitable DAF HoldCo Limited own 99 percent of

10 the limited partnership interests in Charitable

11 DAF Fund, L.P.?

12 A. Yes. The -- the feed -- the -- the

13 feeds -- the -- the three horizontal blocks

14 there that identify Highland Dallas Foundation,

15 Kansas City, Santa Barbara -- there's a fourth

16 of -- relatively de minimus in terms of

17 participation. There's a fourth entity that's

18 missing. It's Dallas -- I forget the name.

19 That -- that -- that structure is -- is a bit

20 dated --

21 Q. Okay.

22 A. -- as it -- as is shown.

23 Q. Okay. So I will tell you and we can

24 look the documents if you want, but attached to

25 CLO HoldCo Limited's claim are a number of

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2 Charitable DAF Fund, L.P., Grant Scott,

3 director, and we put under CLO HoldCo Limited

4 Grant Scott, director, would everything on the

5 right side of that page be accurate, to the

6 best of your --

7 A. I believe so.

8 Q. Well, let's move to the left side of

9 the page. Have you heard of the entity

10 Charitable DAF HoldCo Limited?

11 A. Yes.

12 Q. Are you the sole director of

13 Charitable DAF HoldCo Limited?

14 A. Yes.

15 Q. How did you become -- how did you

16 come to be the char- -- the sole director of

17 Charitable DAF HoldCo Limited?

18 A. That was when it was established.

19 Q. And did Mr. Dondero ask you to serve

20 in that capacity?

21 A. Yes.

22 Q. And did Mr. Dondero ask you to serve

23 as the managing member of Charitable DA- -- DAF

24 GP, LLC?

25 A. Yes.

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2 resolutions, and there's one that I have in

3 mind that shows Charitable DAF HoldCo Limited

4 holding 99 percent of the limited partnership

5 interests of Charitable DAF Fund, L.P., and

6 there's another that shows it being a hundred

7 percent. Do you -- do you know which is

8 accurate at least at this time?

9 A. There's a 1 percent/99 percent

10 division, and I am -- I believe it's the 99

11 percent, but I'm -- I'm getting confused by

12 the -- by the arrangement. I'm so used to

13 another arrangement. I -- I believe the 99

14 percent is correct.

15 Q. Okay. Do you have any understanding

16 as to who owns the other 1 percent of the

17 limited partnership interests of Charitable DAF

18 Fund, L.P.?

19 A. No. This -- this is confusing to

20 me. No.

21 Q. Okay. There are, at least on this

22 page, three foundations that I think you've

23 identified. Are those three foundations

24 together with the fourth that you mentioned the

25 owners of the Charitable DAF HoldCo Limited?

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2 A. Owners?

3 Q. Yes.

4 MR. CLARK: Objection, form.

5 A. They -- they only participate in the

6 money that flows up to them.

7 Q. And what does that mean exactly?

8 A. What's that?

9 Q. What does that -- what do you mean

10 by that? Do the foundations fund Charitable

11 DAF Fund HoldCo Limited?

12 A. Initially. Initially, as I

13 understand it, the money flows downward into

14 the Charitable DAF HoldCo Limited before it

15 ultimately makes its way to CLO HoldCo, and

16 then each of those three entities, the various

17 foundations, obtain participation interest in

18 the money that flows back to them.

19 Q. And -- and is that par- -- are those

20 participation interests in Charitable -- you

21 know what, let -- let me just pull up one

22 document and see if that helps.

23 MR. MORRIS: Can we put up -- I

24 think it's Exhibit Number 5.

25 (SCOTT EXHIBIT 2, Unanimous Written

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2 Dallas Foundation?

3 A. Yes, selected by them.

4 Q. Selected by whom?

5 A. By that foundation.

6 Q. Are you -- are you a director of all

7 of the four foundations that feed into the

8 Charitable DAF HoldCo Limited entities that --

9 A. No.

10 Q. Which of the four foundations are

11 you a director of?

12 A. This and the Santa Barbara -- I'm

13 sorry, Santa Barbara and Kansas City.

14 Q. So is -- there's one that you're not

15 a director of; is that right?

16 A. Yes.

17 Q. And which one is that?

18 A. The -- could you go back to the --

19 Q. Yeah.

20 MR. MORRIS: Go back to the

21 demonstrative.

22 A. It's the Highland Dallas Foundation

23 and Santa Barbara Foundation.

24 Q. Those are the two that you're a

25 director of?

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2 Consent of Directors In Lieu of Meeting,

3 was marked for identification.)

4 MR. MORRIS: I apologize. Let's go

5 to --

6 MS. CANTY: I'm sorry, John. I

7 can't hear you. Was that not the exhibit?

8 MR. MORRIS: 4.

9 MS. CANTY: Okay.

10 THE REPORTER: And Mr. Morris, you

11 are -- Mr. Morris, you are breaking up just

12 a little bit at the end of your questions.

13 BY MR. MORRIS:

14 Q. Okay. Do you see the document on

15 the screen, sir?

16 A. Yes, I do.

17 Q. Okay. And so this is a unanimous

18 written consent of the directors of the

19 Highland Dallas Foundation. That's one of the

20 entities that was on the chart.

21 MR. MORRIS: Can we scroll down to

22 the -- the bottom of the document where the

23 signature lines are. Right there.

24 BY MR. MORRIS:

25 Q. Are you a director of the Highland

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2 A. Yes.

3 Q. To the best of your knowledge, does

4 Mr. Dondero serve as the president for each of

5 the foundations that we're talking about?

6 A. Yes.

7 Q. To the best of your knowledge, is

8 Mr. Dondero a director of each of the

9 foundations that we're talking about?

10 A. Say that again. I'm sorry.

11 Q. Is he also a director of each of the

12 foundations?

13 A. Yes.

14 Q. Do you know whether any of the

15 foundations has any employees?

16 A. I believe they do, but I -- I -- I

17 can't say for certain.

18 Q. Does -- withdrawn.

19 Do you know if there are any

20 officers of any of the four foundations other

21 than Mr. Dondero's service as president?

22 A. I'm sorry. Say that one more time,

23 please.

24 Q. Yes. Do you know whether any of the

25 four foundations has any officers other than

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2 Mr. Dondero's service as president?

3 A. No.

4 Q. You don't know, or they do not?

5 A. I -- I don't believe anyone else

6 has. I -- actually, I should say I don't -- I

7 don't recall. I -- I don't know. I don't -- I

8 don't know.

9 Q. As a director of the Dallas and

10 Santa Barbara foundations, are you aware of any

11 officers serving for either of those

12 foundations other than Mr. Dondero?

13 A. No.

14 Q. Do you know who the beneficial owner

15 of the Charitable DAF HoldCo Limited entity is?

16 A. The beneficial owner?

17 Q. Correct.

18 A. The various -- various trusts that

19 were used to -- that were the vehicles by which

20 the money originally was established within --

21 within -- within CLO HoldCo.

22 Q. Would that be -- would one of them

23 be the Get Good Nonexempt Trust?

24 A. Yes.

25 Q. And you're a trustee of the Get Good

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2 one of the trusts that has an interest in

3 Charitable DAF HoldCo Limited?

4 A. Yes.

5 Q. Are you a trustee of the Dugaboy

6 Investment Trust?

7 A. I am not.

8 Q. Do you know who is?

9 A. I believe it's his sister.

10 Q. And is that -- you're referring to

11 Mr. Dondero's sister?

12 A. I'm sorry. Yes.

13 Q. And what's the basis for your

14 understanding that Mr. Dondero's sive -- sister

15 serves as the trustee of the Dugaboy Investment

16 Trust?

17 A. Many years ago there was a -- there

18 was a clerical error that identified me as the

19 trustee of the Dugaboy. That error was present

20 for approximately two weeks or a week and a

21 half before it was detected and corrected, and

22 so I know from that correction that it's Nancy

23 Dondero.

24 Q. Are there any other trusts that have

25 an interest in Charitable DAF HoldCo Limited

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2 Nonexempt Trust, right?

3 A. Yes.

4 Q. When did you become a trustee of the

5 Get Good Nonexempt Trust?

6 A. Many years ago. I -- I don't

7 remember.

8 Q. Are there any other trustees of the

9 Get Good Nonexempt Trust?

10 A. No.

11 Q. Does the Get Good Nonexempt Trust

12 have any officers, directors, or employees?

13 A. No.

14 MR. CLARK: Objection, form. Sorry.

15 BY MR. MORRIS:

16 Q. Withdrawn.

17 Do you know whether the Get Good

18 Nonexempt Trust has any officers, directors, or

19 employees?

20 A. It does not.

21 Q. And I apologize if I asked this, but

22 are you the only trustee of the Get Good

23 Nonexempt Trust?

24 A. Yes.

25 Q. Is the Dugaboy Investment Trust also

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2 besides those trusts, to the best of your

3 knowledge?

4 A. No.

5 Q. Is it your understanding based on

6 what we've just talked about that the Get Good

7 Nonexempt Trust and the Dugaboy Investment

8 Trust are the indirect beneficiaries of CLO

9 HoldCo Limited?

10 A. Yes.

11 Q. Can you tell me who the

12 beneficiaries are of the Get Good trust?

13 A. I mean, Jim Dondero.

14 Q. And -- and what is that -- is that

15 based on the trust agreement -- your knowledge

16 of the trust agreement?

17 A. Yes.

18 Q. Do you have an understanding of who

19 the beneficiary is of the Dugaboy Investment

20 Trust?

21 A. I don't know anything about that

22 trust.

23 MR. MORRIS: Okay. All right.

24 Let's take a short break and reconvene at

25 3:30 Eastern Time. We've been going for a

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 2 while.
 3 MR. CLARK: Thank you.
 4 MR. MORRIS: Okay. Thank you.
 5 (Whereupon, there was a recess in
 6 the proceedings from 3:20 p.m. to
 7 3:31 p.m.)
 8 BY MR. MORRIS:
 9 Q. Mr. Scott, earlier I think you
 10 testified that you interfaced with the folks at
 11 Highland in connection with your duties as the
 12 director of CLO HoldCo Limited, right?
 13 A. Yes.
 14 Q. Are you aware of any written
 15 agreement between Highland Capital Management
 16 and CLO HoldCo Limited?
 17 A. Yes, the various servicer
 18 agreements.
 19 Q. Okay. Are you aware that
 20 Mr. Dondero resigned from his position at
 21 Highland Capital Management sometime in
 22 October?
 23 A. No.
 24 Q. Have you communicated with anybody
 25 at Highland Capital Management about the

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1 GRANT SCOTT - 1/21/2021
 2 Do you recall the subject matter of
 3 your discussions with Mr. Throckmorton?
 4 MR. CLARK: Objection, form.
 5 BY MR. MORRIS:
 6 Q. Withdrawn.
 7 Do you recall your -- the subject
 8 matter of your communications with
 9 Mr. Throckmorton?
 10 MR. CLARK: Objection, form.
 11 BY MR. MORRIS:
 12 Q. You can answer.
 13 A. I -- I regularly interface with
 14 Mr. Throckmorton regarding approvals of
 15 expenses, and he's my sort of -- he's my point
 16 person for approving wire transfers and things
 17 of that nature.
 18 Q. How about Mr. Patrick, what -- what
 19 area of responsibility does he have with
 20 respect to CLO HoldCo Limited?
 21 A. He -- he doesn't, to my knowledge.
 22 Q. Do you recall the nature of the
 23 substance of any communications that you've had
 24 with Mr. Patrick since -- you know, the last
 25 two or three months?

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1 GRANT SCOTT - 1/21/2021
 2 affairs of CLO HoldCo Limited at any time since
 3 October?
 4 A. Yes.
 5 Q. Anybody other than Jim Seery?
 6 A. Yes.
 7 Q. Okay. Let's start with Mr. Seery.
 8 You've spoken with him before, right?
 9 A. Yes.
 10 Q. Do you have his phone number?
 11 A. Yes.
 12 Q. How many times have you spoken with
 13 Mr. Seery, to the best of your recollection,
 14 just generally? It's not a test.
 15 A. Three, maybe four times.
 16 Q. Okay. Can you identify by name
 17 anybody else at Highland that you've spoken
 18 with since -- in the last two or three months?
 19 A. I spoke to Jim Dondero. I've spoken
 20 with Mike Throckmorton. The usual suspects, so
 21 to speak. Mark Patrick, Mel- -- Melissa
 22 Schroth.
 23 Q. Can you recall anybody else?
 24 A. No. No. Sorry.
 25 Q. Did you -- did you -- withdrawn.

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1 GRANT SCOTT - 1/21/2021
 2 A. Yes. Or -- yes.
 3 Q. And what -- what are the nature of
 4 those conversations or the substance?
 5 A. He was -- he was one of the
 6 individuals that helped to establish the
 7 hierarchy for the -- what I keep referring to
 8 as the charitable foundation.
 9 Q. And -- and do you recall why you
 10 spoke to him in the last -- or -- withdrawn.
 11 Do you recall the nature of your
 12 communications in the last two or three months
 13 with Mr. Patrick?
 14 A. I --
 15 MR. CLARK: And hold on, Grant. I'm
 16 going to caution -- my understanding -- I
 17 believe Mr. Patrick's an attorney, and so
 18 I'm going to caution you that you shouldn't
 19 disclose the substance of -- of those
 20 communications based on the attorney-client
 21 privilege.
 22 MR. MORRIS: Well, I'm -- I -- I am
 23 the lawyer for the company so -- I guess
 24 there are other people on the phone and I
 25 appreciate that, but let's see if we can --

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2 I don't mean to be contentious here, so it

3 wouldn't -- I -- I'd be part of the

4 privilege anyway.

5 BY MR. MORRIS:

6 Q. But in any event, can you tell me

7 generally -- I'm just looking for general

8 subject matter of your conversations with

9 Mr. Patrick.

10 A. I asked him how I would go about

11 re- -- resigning my position.

12 Q. And when did that conversation take

13 place?

14 A. Within the last two weeks.

15 Q. Have you made a decision to resign?

16 A. No.

17 Q. I think you mentioned Melissa

18 Schroth. Do I have that right?

19 A. Yes.

20 Q. Can you describe generally the

21 communications you had with Ms. Schroth in the

22 last few months.

23 A. They -- she has e-mailed me certain

24 documents that I needed to sign. I had a

25 conversation with her about -- about some

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2 A. No.

3 Q. In your discussions with Mr. Seery,

4 did you ever tell him that you thought Highland

5 Capital Management was in default under any

6 agreement in relation to the CLOs?

7 A. No.

8 Q. I want to focus in particular on the

9 shared services agreement. In -- in your

10 discussions with Mr. Seery, did you ever tell

11 him that you believed that Highland Capital

12 Management was in default or in breach of its

13 shared services agreement with CLO HoldCo

14 Limited?

15 A. No.

16 Q. In your communications with

17 Mr. Seery, did you ever indicate any concern on

18 the part of CLO HoldCo Limited with respect to

19 Highland Capital's Man- -- Highland Capital

20 Management's performance under the shared

21 services agreement?

22 A. No.

23 Q. As you sit here today, do you have

24 any reason to believe that Highland Capital

25 Management has done anything wrong in

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1 GRANT SCOTT - 1/21/2021

2 home -- home improvements, home construction

3 with respect to Jim Dondero's home in Colorado,

4 and that's -- I -- I think that's -- that's it.

5 Q. Okay. Do you recall communicating

6 with anybody at Highland in the last three

7 months other than Mr. Dondero,

8 Mr. Throckmorton, Mr. Patrick, and Ms. Schroth?

9 A. I -- I spoke with Jim Seery this

10 week.

11 Q. Anybody else?

12 A. I don't -- I don't know.

13 Q. Okay.

14 A. I don't think so.

15 Q. In your communications with

16 Mr. Seery, did you two ever discuss his reasons

17 for making any trade on behalf of any CLO?

18 A. No.

19 Q. In your discussions with Mr. Seery,

20 did you ever tell him that you believed that

21 Highland Capital Management had breached any

22 agreement in relation to any CLO?

23 A. Have I had that discussion with Jim

24 Seery?

25 Q. Yes.

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2 connection with its performance as the

3 portfolio manager of the CLOs in which CLO

4 HoldCo Limited has invested?

5 MR. CLARK: Object to form.

6 A. In terms of the -- are you saying --

7 please say that again. I'm sorry.

8 Q. That's okay. I ask long questions

9 sometimes so forgive me, but I'm trying to

10 get -- I'm trying to be precise so that's why

11 it's difficult sometimes. But let me try

12 again.

13 Does CLO HoldCo Limited contend that

14 Highland Capital Management has done anything

15 wrong in the performance of its duties as

16 portfolio manager of the CLOs in which CLO

17 HoldCo has invested?

18 MR. CLARK: Objection, form.

19 A. Yes. It's -- it's outlined in our

20 objections to -- to the plan.

21 Q. Okay. Any -- are you aware of

22 anything that's not contained within CLO Holdco

23 Limited's objection to the plan?

24 MR. CLARK: Objection, form.

25 A. I don't know if this is responsive

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1 GRANT SCOTT - 1/21/2021
 2 to your quest -- request, but two -- two
 3 issues, I believe, also pose an in- -- a
 4 problem for CLO HoldCo. One is we are paying
 5 for services. I think I referred to the
 6 services as being soup to nuts, but we are not
 7 getting the full services. We haven't been for
 8 some time. So we're likely overpaying. There
 9 was a Highland Select Equity issue, 11-month
 10 payment that was delayed which I was unaware of
 11 was due. Normally, I would have interfaced
 12 with someone at Highland about that, but my
 13 attorney -- but my -- my attorney had to make a
 14 request for payment, and that payment was
 15 ultimately made. I -- other than that, I -- I
 16 don't -- I don't know. I don't believe so.
 17 Q. I want to distinguish between the
 18 shared services agreement between Highland
 19 Capital Management and CLO HoldCo Limited on
 20 the one hand and on the other hand the
 21 management agreements pursuant to which
 22 Highland Capital Management manages certain
 23 CLOs that CLO HoldCo invests in.
 24 You understand the distinction that
 25 I'm making?

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 2 Q. I'll try again.
 3 A. I'm just -- I'm sorry. I was
 4 distracted and -- and I -- I'm sorry for asking
 5 you to repeat it again. Please --
 6 Q. Okay.
 7 A. Please re- --
 8 Q. Are you aware that CLO HoldCo
 9 Limited has made investments in certain CLOs?
 10 A. Oh, yes, certainly.
 11 Q. And are you aware that those CLOs
 12 are managed by Highland Capital Management?
 13 A. Yes. As the -- as the servicer,
 14 yes.
 15 Q. Okay. Have you ever seen any of the
 16 agreements pursuant to which Highland Capital
 17 Management acts as a servicer?
 18 A. I've seen a few, yes.
 19 Q. Does CLO HoldCo Limited contend that
 20 it is a party to any agreement between Highland
 21 Capital Management and the CLOs?
 22 MR. CLARK: Object to form. And I
 23 just want to note for the record that
 24 Mr. Scott is here testifying in his
 25 individual capacity, I believe, not as a

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1 GRANT SCOTT - 1/21/2021
 2 A. Now I do. I'm sorry. I didn't
 3 appreciate that.
 4 Q. Okay. So let's just take each of
 5 those pieces one at a time. You mentioned your
 6 concern about services. That's a concern that
 7 arises under the shared services agreement,
 8 right?
 9 A. Yes.
 10 Q. And you mentioned something about a
 11 delayed payment having to do with Highland
 12 Select. Do I have that generally right?
 13 A. Correct.
 14 Q. And is that a concern that you have
 15 that arises under the shared services
 16 agreement?
 17 A. It's not the agreement with respect
 18 to the CLOs as I understand it.
 19 Q. Okay. So then let's turn to that
 20 second bucket. You were aware -- you are
 21 aware, are you not, that Highland Capital
 22 Management has certain agreements with CLOs
 23 pursuant to which it manages the assets that
 24 are owned by the CLOs?
 25 A. I'm so sorry. Could you please --

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 2 corporate representative.
 3 MR. MORRIS: Fair enough. But he is
 4 the only representative so...
 5 MR. CLARK: Fair enough. I just
 6 want that made -- stated for the record,
 7 but I also object as to form.
 8 MR. MORRIS: Got it.
 9 A. It's a third-party beneficiary under
 10 the agreements.
 11 Q. And is that because of something you
 12 read in the document, or is that just your
 13 belief and understanding?
 14 A. My belief and understanding.
 15 Q. And is that belief and understanding
 16 based on anything other than conversations with
 17 counsel?
 18 A. In -- in -- recently it has, but I
 19 don't recall from previous interactions over
 20 the years how we discussed that or how I came
 21 to -- to understand that.
 22 Q. Does HCLO [sic] HoldCo -- did -- in
 23 your capacity as the sole director of HCLO
 24 HoldCo Limited, are you aware of anything that
 25 Highland Capital Management has done wrong in

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2 connection with the services provided under the

3 CLO management agreements?

4 MR. CLARK: Objection, form.

5 A. I -- I don't -- I don't -- I

6 don't -- your answer's no.

7 Q. In your capacity as the director of

8 CLO HoldCo Limited, are you aware of any

9 default or breach under the CLO management

10 agreements that -- that Highland Capital

11 Management has caused?

12 MR. CLARK: Objection, form.

13 A. We have raised the issue about

14 ongoing sales in various -- I'm not sure

15 whether they represent a technical breach,

16 though.

17 Q. Okay. Are you aware of any

18 technical breach?

19 MR. CLARK: Objection, form.

20 A. No.

21 Q. I'm sorry. You said, no, sir?

22 A. My answer's no.

23 Q. Thank you. Do you know who made the

24 decision to cause the CLO HoldCo Limited entity

25 to invest in the CLOs that are managed by

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2 making an investment in a CLO that wasn't

3 managed by Highland?

4 A. No.

5 Q. Is there any particular reason why

6 you haven't given that any consideration?

7 A. That hasn't been my role. That's

8 not my expertise. That's been something

9 Highland has done and, quite frankly, over the

10 years brilliantly so, no.

11 Q. You're aware that HCM, L.P., has

12 filed for bankruptcy, right?

13 A. Yes.

14 Q. When did you learn that Highland had

15 filed for bankruptcy?

16 A. After the fact sometime in late --

17 late 2019.

18 Q. Since the bankruptcy filing, have

19 you made any attempt to sell CLO HoldCo

20 Limited's position in any of the CLOs that are

21 managed by Highland?

22 A. No.

23 Q. So notwithstanding the bankruptcy

24 filing, you as the director haven't made any

25 attempt to transfer out of the CLOs that are

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2 Highland Capital?

3 A. The select -- ultimately, I had to.

4 Q. I thought you testified earlier that

5 you didn't make decisions as to investment. Do

6 I have that wrong?

7 A. The selection.

8 Q. Okay.

9 A. I -- I'm --

10 Q. So -- so explain to me --

11 A. I have to approve -- I have to

12 approve the selection. I'm sorry. But the

13 people making -- I was putting that in the camp

14 of the people that make the selection.

15 Q. Okay. Do you know if -- do you know

16 if there are CLOs in the world that exist that

17 aren't managed by Highland Capital Management?

18 MR. CLARK: Objection, form.

19 A. Are there CLOs in the -- in the

20 world that are not --

21 Q. Yes.

22 A. Yes. It's -- it's a well-known --

23 it's a well-known --

24 Q. In your capacity as the director of

25 CLO HoldCo Limited, did you ever consider

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2 managed by Highland, correct?

3 A. Correct.

4 Q. Did you ever give any thought to

5 exiting the CLO vehicles that were managed by

6 Highland in light of its bankruptcy filing?

7 A. No.

8 Q. Have you ever discussed with

9 Mr. Seery anything having to do with the

10 management -- withdrawn.

11 Have you ever discussed with

12 Mr. Seery any aspect of the debtor's management

13 of the CLOs in which CLO HoldCo Limited is

14 invested?

15 A. No.

16 Q. You mentioned earlier a request to

17 stop trading. Do I have that right?

18 A. Yes.

19 Q. Okay. And are you aware that a

20 letter was written purportedly on behalf of CLO

21 HoldCo Limited in which a request to stop

22 trading was made?

23 A. As a cos- -- yeah. Yes.

24 Q. Okay. Have you ever seen that

25 letter before?

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2 A. Yes.

3 MR. MORRIS: Can we put up on the

4 screen -- I think it's now Exhibit 6. It's

5 Exhibit DDDD.

6 (SCOTT EXHIBIT 3, Letter to James A.

7 Wright, III, et al., from Gregory Demo,

8 December 24, 2020, with Exhibit A

9 Attachment, was marked for identification.)

10 MR. MORRIS: Can we scroll down to,

11 I guess, what's Exhibit A. Ri- -- right

12 there.

13 BY MR. MORRIS:

14 Q. You see this is a letter Dece- --

15 dated December 22nd?

16 A. Yes.

17 Q. In the first paragraph there there's

18 a reference to the entities on whose behalf

19 this letter is being sent.

20 Do you see that?

21 A. Yes.

22 Q. Okay. So this letter was sent on

23 December 22nd. Did you see a copy of it before

24 it was sent?

25 A. A -- a draft -- an earlier draft of

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2 that the entities other than CLO HoldCo Limited

3 that are listed in the first paragraph made a

4 motion in the court asking the court for an

5 order that would have prevented Highland from

6 making any transactions for a limited period of

7 time?

8 A. Yes.

9 Q. Did you know that motion was being

10 made prior to the time that it was made?

11 A. I'm not sure.

12 Q. Did you ever think about whether CLO

13 HoldCo Limited should join that particular

14 motion?

15 A. I believe we were -- my attorney was

16 aware of it. I don't recall our discussion

17 about it. We were aware -- when I say we, I

18 mean collectively -- and did not join it.

19 Q. Okay. Can you tell me why you did

20 not join it.

21 MR. CLARK: And, again, Grant, to --

22 to the extent it's based on communications

23 with counsel, you're free to say that

24 but -- but not to disclose any substance of

25 communications with counsel.

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2 this I did.

3 Q. Okay. Did you provide any comments

4 to it?

5 A. I did.

6 MR. CLARK: Well, hold on. Grant,

7 let me caution you. To the extent you

8 provided comments to counsel, we're going

9 to assert the attorney-client privilege on

10 those comments.

11 MR. MORRIS: It's just a yes-or-no

12 question. I'm not looking for the

13 specifics.

14 MR. CLARK: Thank you.

15 A. Yes.

16 Q. Are you aware that earlier letters

17 were -- withdrawn.

18 Are you aware that prior to December

19 22nd, the entities other than CLO HoldCo

20 Limited that are listed in this pers- -- first

21 paragraph had sent a letter making the same

22 request?

23 A. With respect to a letter, no. No,

24 I -- I did not.

25 Q. Are you aware as you sit here now

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2 A. The subject of this letter on the

3 22nd which yielded the original letter you

4 briefly showed me on the 24th as well as an

5 additional letter on the 28th identified two

6 points as I understand it. The first point is

7 what I believe is the somewhat innocuous

8 request to halt sales, not a demand in any way.

9 And the second more substantive issue has to do

10 with steps to remove Highland or a subsequent

11 derived entity from Highland from the various

12 services agreements that you had previously --

13 we had previously discussed. Neither of those

14 issues met the require- -- neither of those

15 issues led us to believe that a motion such as

16 what you've just mentioned was -- was right --

17 Q. Okay.

18 A. -- because no -- no decision has

19 been made on that.

20 Q. Okay.

21 MR. MORRIS: So I want to go back to

22 my question and move to strike as

23 nonresponsive, and I'll just ask my

24 question again.

25 BY MR. MORRIS:

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2 Q. Why did CLO HoldCo Limited decide

3 not to participate in the earlier motion that

4 was brought by the other entities that are

5 identified in Paragraph 1 that asked the court

6 to stop Highland from engaging in trades?

7 A. John, I'm so sorry. There was a

8 feedback loop that came up when you started to

9 re- -- re- -- recite -- restate your question.

10 I'm sorry.

11 Q. That's okay. Why did CLO HoldCo

12 Limited decide not to join in the earlier

13 motion where the entities listed in Paragraph 1

14 asked the court to order Highland not to make

15 any further trades? Why did they not join that

16 motion?

17 A. The -- the issue didn't rise to

18 the -- I don't believe we had formulated a

19 legal basis sufficient to justify such steps.

20 We hadn't laid the foundation necessary to --

21 to do that.

22 Q. Are you aware of what the court

23 decided?

24 A. By virtue of the original letter you

25 sent me dated the -- or show -- showed

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2 A. Oh. Oh. Oh, I'm -- yeah. Yeah.

3 Oh, yes. I'm sorry. Of course.

4 Q. Right? I mean, Highland has been

5 making trades on behalf of CLOs for years,

6 right?

7 A. Yes.

8 Q. And Highland was making trades on

9 behalf of CLOs throughout 2020, to the best of

10 your knowledge, right?

11 A. Yes.

12 Q. And you know when Jim Dondero was

13 still with Highland, he was making trades on

14 behalf of CLO -- on behalf of the CLOs, right?

15 A. Yes.

16 Q. And you never objected when Jim

17 Dondero was doing it; is that right?

18 A. That is correct.

19 Q. Okay. So what changed that caused

20 you in your capacity as the director of CLO

21 HoldCo to request a full stoppage of trading?

22 A. It was my understanding that because

23 of the bankruptcy and the removal of Jim

24 Dondero that the replacement decision-makers

25 did not have the expertise where I felt

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2 initially dated the 24th, I have a general

3 understanding of what they decided.

4 Q. Did you -- did you ever review the

5 transcript of the hearing where the other

6 parties asked the court to stop Highland from

7 engaging in any further trades on the CLOs?

8 A. I did not.

9 Q. Is there anything different about

10 the request in this letter, to the best of your

11 knowledge, from the request that was made of

12 the court just six days earlier?

13 MR. CLARK: Objection, form.

14 A. Yes. There's a -- in -- in my -- my

15 view there's a substantial difference between

16 filing an action converting a request into

17 essentially a demand versus a gentle request

18 with multiple caveats, that that request is not

19 a demand.

20 Q. Okay. Let me ask you this: Are you

21 aware -- what -- when did you first learn that

22 Highland was making trades in its capacity as

23 the servicer of the CLOs? When -- when did you

24 first learn that Highland was doing that? Ten

25 years ago, right? I mean --

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2 comfortable with them making those decisions,

3 but...

4 Q. I thought you testified earlier that

5 you weren't aware that Mr. Dondero left

6 Highland. Am I mistaken in my recollection?

7 A. I think you said in October, and

8 I -- as I -- there's some con- -- I have

9 confusion about when he left versus when he was

10 still there but other -- but he was not making

11 those trades.

12 Q. Okay. Fair enough. The bankruptcy

13 has nothing to do with your desire to stop

14 trading, right, because Highland traded for a

15 year after the bankruptcy and never took any

16 action to try to stop Highland from trading on

17 behalf of the CLOs, fair?

18 A. The -- Highland as of right now

19 isn't the same entity it was -- well, the

20 decision-making team -- the -- the financial

21 decision-making team for CLO Holdco's is no

22 longer the team I have worked with, and upon

23 discussion with counsel, we agreed -- I agreed

24 to this letter, which I did, to just maintain

25 the status quo.

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2 Q. How did you form your opinion that

3 the debtor doesn't have the expertise to

4 execute trades on behalf of the CLOs today?

5 What's the basis for that belief?

6 A. I -- as I understood it, the -- the

7 people historically making that decision were

8 no longer making that decision.

9 Q. Who besides Mr. Dondero --

10 withdrawn.

11 Who are you referring to?

12 A. Well, Mr. Dondero is one. I don't

13 know the names, but I -- I understood it to

14 mean that the group previously responsible, for

15 exam- -- for example, Hunter Covitz, including

16 Hun- -- him, were no longer involved in the

17 decision-making process, but...

18 Q. How did you -- how -- how -- who

19 gave you the information that led you to

20 conclude that Hunter Covitz was no longer

21 involved in the decision-making process?

22 A. Specifically him and that name being

23 mentioned, I -- I -- I wasn't informed of his

24 speci- -- him -- him being removed. I was

25 under the impression that the team that had

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2 updated my contacts to -- to add his name so

3 now I have his name. And during that

4 conversation he informed me that he did have

5 that expertise --

6 Q. And --

7 A. -- without me making any inquiry.

8 He volunteered that.

9 Q. But you hadn't made any inquiry

10 prior to the time that you authorized the

11 sending of this letter; is that fair?

12 A. That's correct.

13 Q. Do you know whether Mr. Seery, in

14 fact, engaged in transactions on behalf of the

15 debtor since he was appointed back in January?

16 A. I do not.

17 Q. Did you ask that question prior to

18 the time you authorized the sending of this

19 letter?

20 A. I did not.

21 Q. Can you identify a single

22 transaction that Jim Seery has ever made that

23 you disagree with?

24 A. No.

25 Q. Can you identify any transaction

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2 previously been doing that was no longer doing

3 it.

4 Q. And what gave you that impression?

5 A. Was communications I had with my

6 attorney.

7 Q. Okay. Is there any source for your

8 information that led you to conclude that the

9 team was no longer there that was able to

10 engage in the trades on behalf of the CLOs

11 other than your attorneys?

12 A. Well, this -- this letter -- I -- I

13 think the answer is no.

14 Q. Thank you. Do you know if Jim -- do

15 you have an opinion or a view as to whether Jim

16 Seery is qualified to make trades?

17 A. This --

18 MR. CLARK: Objection, form.

19 A. I don't know -- I spoke to Jim Seery

20 earlier this week. You -- you asked me whether

21 I had his number. I said I did. That's only

22 because he called me. My phone rang with his

23 number. It was a number I did not recognize,

24 it was not in my contacts, but he left me a

25 voice mail so I called him back. Then I

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2 that the debtor made on behalf of any of the

3 CLOs since the time that you understand

4 Mr. Dondero left Highland that you disagree

5 with?

6 A. No.

7 Q. Did you have any discussion with any

8 representative of any of the entities listed on

9 this document where they told you they believe

10 Jim Seery didn't have the expertise to engage

11 in transactions on behalf of the whole -- of

12 the CLOs?

13 A. You -- your question -- I'm -- I'm

14 sorry. I'm trying to be -- I'm trying to be a

15 hundred perc- -- I'm trying to be accurate

16 here.

17 Q. Let me interrupt you and just say,

18 I'm very grateful for your testimony. I know

19 this is not easy, and I do believe that you're

20 earnestly and honestly trying to answer the

21 questions the best you can. So no apologies

22 necessary anymore. If you need me to repeat

23 the question or rephrase it, just say that,

24 okay?

25 A. Please -- yes.

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2 Q. Okay.

3 A. Please -- please repeat that.

4 Q. Did you ever communicate with any

5 employee, officer, director, representative of

6 any of the entities that are on this page

7 concerning the debtor's ability to service the

8 CLOs?

9 A. I believe so.

10 Q. And can you identify the person or

11 persons?

12 A. I think it's Jim Dondero.

13 Q. Anybody else other than Mr. Dondero?

14 A. No.

15 Q. When did you have that conversation

16 or those conversations with Mr. Dondero?

17 A. This letter is dated the 22nd --

18 Q. Correct.

19 A. -- right?

20 Q. Yes.

21 A. I believe that's the Tuesday before

22 Christmas, and this would have been on the

23 21st, the Monday.

24 Q. What do you recall about your

25 conversation on the 21st regarding the

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2 there.

3 BY MR. MORRIS:

4 Q. Do you see the request that's in the

5 last sentence?

6 A. Yes.

7 Q. Is that the same thing that

8 Mr. Dondero told you should happen, that --

9 that there should be no further CLO

10 transactions at least until the issues raised

11 and addressed by the debtor's plan were

12 resolved substantively?

13 A. Yes.

14 Q. Is there anything that he said

15 that's inconsistent with the request that's

16 made here?

17 MR. CLARK: Objection, form.

18 A. This -- and can you -- can you show

19 me earlier parts?

20 Q. Of course. You know what, I'll

21 withdraw the question.

22 And let me see if I can do it this

23 way: In your discussion with Mr. Dondero, did

24 he indicate that he had seen a draft of this

25 letter?

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2 substance of this particular letter?

3 A. Jim Dondero described why he

4 believed sales being made on an ongoing basis

5 after a request was made to stop was im- --

6 improper.

7 Q. Do you -- do you rely on what

8 Mr. Dondero said to you during that phone call

9 on December 21st in -- in deciding to join in

10 this particular letter?

11 A. No.

12 Q. Did you only then rely on the

13 information you obtained from counsel?

14 A. Yes. I -- I -- I -- I considered

15 this letter to be nearly the most gentle

16 request imaginable amongst lawyers to maintain

17 the status quo.

18 Q. And the request that's made in this

19 letter is perfectly consistent with what

20 Mr. Dondero told you on the 21st of December,

21 correct?

22 A. I don't -- no.

23 Q. How --

24 MR. MORRIS: Can we go to the end of

25 this letter, please. All right. Right

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2 A. No. And I didn't -- I didn't have a

3 discussion with him. I -- I merely listened to

4 him. There was no -- I -- I had no input to

5 the conversation.

6 Q. Okay. I -- I did -- I didn't --

7 I -- I appreciate that. So he called you; is

8 that right?

9 A. We -- we called in.

10 Q. Oh, was it --

11 A. I --

12 Q. Was it --

13 A. I don't know --

14 Q. Was it --

15 A. I don't know the sequence of the

16 calls. I'm sorry.

17 Q. Was there anybody on the call other

18 than you and Mr. Dondero, the call that you're

19 describing on December 21st?

20 A. Yes, my attorney and an attorney --

21 I believe the attorney that signed this letter.

22 Q. Okay. And I just want to focus on

23 what Mr. Dondero said. Did he -- did he say

24 during the call that Highland should not be

25 engaging in any further CLO transactions?

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2 A. He took a more -- if I can

3 characterize his mental -- I looked at the

4 issue of maintaining the status quo since there

5 was somebody that was complaining about it,

6 that that -- because it -- it isn't assets of

7 Highland, it doesn't adversely affect Highland.

8 If -- if stopping the sales -- you know, my --

9 my thought was -- is if stopping the sales

10 reduces the likelihood of litigation

11 disputes -- you already saw that there was the

12 one from middle of December. I -- I thought

13 that would be the more appropriate way to go.

14 I didn't think there'd be any harm.

15 Q. And was that your --

16 A. I think -- I think Jim Dondero had a

17 more legalistic view of its impro- -- im- --

18 improper nature.

19 Q. And did he share that view with you?

20 A. On Monday, yes.

21 Q. Can you describe for me your

22 recollection of what he said about the

23 legalistic view?

24 A. Just the mention of -- all I recall

25 is in terms of -- the law associated with it

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2 transactions before they made a request six

3 days after the court threw out their suit as

4 frivolous? I'll withdraw that. That's too

5 much.

6 A few days later did you authorize

7 the sending of another letter to the debtor in

8 which you suggested that the -- the entities on

9 behoove -- on -- on whose behalf the letter was

10 sent might take steps to terminate the CLO

11 management agreements?

12 A. I did not see -- so there is a --

13 there is a December 28th letter.

14 MR. MORRIS: Let's just go to the

15 next letter, and -- and let's just call

16 that up.

17 BY MR. MORRIS:

18 Q. I think it's -- I think it's

19 actually dated December 23rd. It was the next

20 day.

21 A. Yes.

22 (SCOTT EXHIBIT 4, Letter to James A.

23 Wright, III, et al., from Gregory Demo,

24 December 24, 2020, with Exhibit A

25 Attachment, was marked for identification.)

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2 was -- the Advisers Act was mentioned --

3 Q. Did you have --

4 A. -- but I don't -- I don't know what

5 that is. You know, I don't know what that is.

6 Q. And you -- and -- and you never --

7 it never occurred to you to pick up the phone

8 and -- and to speak with Mr. Seery to see why

9 it was he thought he should be engaging in

10 transactions?

11 A. No. And -- but I -- my lack of

12 volunteering a phone call to Jim Seery isn't --

13 it's -- it's because of -- I -- I thought any

14 phone call by me to Jim Seery would be

15 inappropriate because he's represented by

16 counsel. I mean, we were working on claims

17 against him --

18 Q. Okay.

19 A. -- right, so...

20 Q. Did you -- did you -- did you think

21 to instruct your lawyers to reach out to

22 Mr. Seery to actually speak to him instead of

23 just sending a letter like this and to -- and

24 to ask -- and to maybe inquire as to why he

25 thought it was appropriate to engage in

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2 BY MR. MORRIS:

3 Q. And do you recall that the next day

4 CLO HoldCo Limited joined in another letter to

5 the debtors? Do you have that recollection?

6 A. Yes. Not -- not be- -- yes, I do,

7 but -- yes, I do.

8 Q. Did you see this letter before it

9 was sent?

10 A. I don't believe so.

11 Q. Did you authorize the sending of

12 this letter?

13 A. I gave -- I relied on my attorney to

14 guide me through this process.

15 Q. I appreciate that.

16 A. I let him make that call on this

17 letter, which is -- copies most of the prior

18 letter and then adds another issue.

19 Q. Okay. Do you have an understanding

20 of what that issue is?

21 A. Yes.

22 Q. And what is your understanding of

23 what that additional issue is?

24 A. Somewhere in this letter of the 23rd

25 there's an -- there's an -- an inclusion of

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2 a -- a statement of an -- a future intent.

3 Q. A future intent to do what?

4 A. To remove Highland as the servicer

5 of the agreements you talked to me about

6 previously.

7 Q. Can you tell me whether there's a

8 factual basis on which CLO HoldCo Limited

9 believes that the debtor should be removed as

10 the servicer of the portfolio manager of the

11 CLOs?

12 A. Yes. There are -- there are

13 multiple bases to consider subject to all the

14 other conditional language in the request of

15 these letters to consider that going forward

16 but no decision. That intent is an intent to

17 evaluate, not an intent to take any action. I

18 haven't authorized any action. I don't feel

19 comfortable with my knowledge base at this

20 time, but it's something being explored.

21 Q. So knowing everything that you know

22 as of today, you have not yet formed a decision

23 as to whether CLO HoldCo Limited will take any

24 steps to terminate Highland's portfolio

25 management agreements, correct?

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2 know why I'm a patent attorney and not one of

3 you guys. But the thing that resonates with me

4 the most from a legal substantive, black letter

5 law sort of issue is the plan for

6 reorganization, which we've objected to. I've

7 re- -- I've reviewed the objection, and that

8 sets forth our -- that sets forth my position,

9 and I consider that to be quite material. The

10 others are issues of practical effects of

11 what's happened thus far with the bankruptcy,

12 the termination of the experts with a long

13 track record of success, the soon-to-be

14 termination of all employees, the cancellation

15 of various representation agreements, things of

16 that nature looked at from an additive sort of

17 perspective.

18 Q. You know that -- can we refer to the

19 counterparties under the CLO management

20 agreements as the issuers? Are you familiar

21 with that term?

22 A. I -- I am familiar with the term

23 issuers, yes.

24 Q. Okay. And do you understand --

25 A. There's an agreement between the --

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2 A. I don't -- I don't want to be

3 difficult, but I'm -- I'm confused yet again

4 with your question. But I have not -- there --

5 there are a number of cr- -- a number of issues

6 that with my nonfinance background would

7 suggest to me that they -- they may be bases

8 for -- for cause, to -- to assert a cause. And

9 I've been conferring with my attorney about

10 that, but it's very preliminary and no -- no

11 decision has been made. I -- no decision is

12 being made.

13 Q. So what -- what are the factors that

14 are causing you to consider possibly seeking to

15 begin the process of terminating the CLO

16 management agreements?

17 A. Well, I guess I would break them

18 down into maybe two categories, maybe more.

19 The one that resonates most with me -- I don't

20 know -- maybe because even though I'm a patent

21 attorney, I guess at one point I was an

22 attorney. But the thing that resonates most

23 with me --

24 Q. You are an attorney.

25 A. -- at the moment -- well, now you

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2 I'm sorry.

3 Q. There's an agreement between the

4 issuers and Highland pursuant to which Highland

5 manages the CLO assets, right?

6 A. With res- -- yes.

7 Q. Okay. And do you understand what's

8 going to happen to those management contracts

9 in connection with the plan of reorganization?

10 A. Partially.

11 Q. What's your partial understanding?

12 A. Well, I -- I wouldn't want to

13 characterize it as a partial understanding. I

14 mean, with respect to part of the agreement.

15 Q. Okay.

16 A. Okay. Our plan objection lays out

17 our basis for objecting to steps that Highland

18 is actively taking to preclude us from the full

19 rights that we have as third-party

20 beneficiaries under that agreement, and they're

21 not de minimus. They're quite material. They

22 relate to cause issues and no-cause issues, for

23 example, as out- -- as outlined in our --

24 our -- our objections.

25 Q. Okay. Did you ever make any attempt

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2 to speak with any issuer concerning Highland's

3 performance under the CLO management

4 agreements?

5 A. No.

6 Q. Why not?

7 A. I -- I don't have any facts --

8 understand I -- I get all of the reports

9 periodically from Highland -- from Highland.

10 I -- I don't have a basis that I'm aware of to

11 complain about performance issues. This is a

12 legal issue that I'm talking about.

13 Q. So you have no basis to suggest that

14 Highland hasn't performed under the CLO

15 management agreements, correct?

16 A. Well, Highland as of right now,

17 the -- the issue really is as -- as to what's

18 next, not -- not -- I -- I don't -- I don't

19 believe I have facts that support a com- --

20 a -- an issue right now. It's -- it's --

21 it's -- it's going forward that is the problem.

22 Q. I --

23 A. That's -- you know, that's --

24 Q. Have you given any thought to

25 speaking with the issuers to try to get their

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2 negotiating with Highland to permit Highland to

3 assume the CLO management agreements and to

4 continue operating under them?

5 A. I believe so --

6 Q. Is that --

7 A. -- but they're --

8 Q. Go ahead. I'm sorry.

9 A. As I understand it, Highland

10 wants -- Highland or its subsidiary -- or

11 its -- its -- its postbankruptcy relative --

12 post- -- excuse me, that Highland

13 postbankruptcy -- or postplan confirmation

14 wants to move forward, substitute itself for

15 the prior issuer -- no, sorry, substitute

16 itself for the prior servicer under those

17 agreements to assume those agreements but in

18 the process of assuming those agreements,

19 carving out a bunch of provisions that from a

20 legal standpoint and a potentially future

21 practical and monetary standpoint are quite

22 substantial, and that has to relate to the

23 removal rights based on cause and without

24 cause. As I understand it, that's all set

25 forth in our plan objection.

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2 views as to what they think is going to happen

3 in the future?

4 A. No.

5 Q. They're the -- they're the actual

6 direct beneficiaries under the CLO management

7 agreements, to the best of your understanding,

8 right?

9 A. Yes. Their rights may not be

10 impacted; it's CLO Holdco's rights that are

11 going to be adversely impacted. So it's -- I

12 don't know that our view is in alignment with

13 their view. But to answer your question, no,

14 we did not contact them.

15 Q. Do you have any knowledge or

16 information as to any assertion by the issuers

17 that Highland is in breach of any of the CLO

18 management agreements?

19 A. No.

20 Q. Do you have any knowledge or

21 information as to whether or not any of the

22 issuers believe that Highland is in default

23 under the CLO management agreements?

24 A. No, I don't have any of those facts.

25 Q. Are you aware that the issuers are

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2 Q. Okay. Are you aware of a third

3 letter that was sent to Highland on behalf of

4 CLO HoldCo and the other entities that are

5 listed in this document?

6 A. The December 28th letter, is that

7 what you mean?

8 Q. It's actually December 31st, if I

9 can refresh your recollection.

10 MR. MORRIS: Can we put up Exhibit

11 F?

12 (SCOTT EXHIBIT 5, Letter to Jeffrey

13 N. Pomerantz from R. Charles Miller,

14 December 31, 2020, was marked for

15 identification.)

16 BY MR. MORRIS:

17 Q. You remember that there was a letter

18 dated on or about December 31st that was

19 sent -- oh, actually, you know, I apologize.

20 If we scroll down to the -- to the next -- to

21 the first box, there actually is no mention of

22 CLO HoldCo.

23 Are you aware that Mr. Dondero was

24 evicted from Highland's offices as of the end

25 of the year?

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2 A. I -- I didn't know the time, but I

3 understand he's no longer there.

4 Q. Does CLO HoldCo Limited contend that

5 it was damaged in any way by Mr. Dondero's

6 eviction from the Highland suite of offices?

7 MR. CLARK: Objection, form.

8 A. I -- I don't have any information to

9 support that as of this time.

10 Q. It's not -- it's not a belief that

11 you hold today?

12 A. I don't have a belief of that, yes.

13 MR. MORRIS: All right. Let's take

14 a short break. I may be done. I -- I'm

15 grateful, Mr. Scott, and don't want to

16 abuse your time. Give me -- let -- just

17 let -- let's come back at 4:50, just eight

18 minutes, and if I have anything further, it

19 will be brief.

20 (Whereupon, there was a recess in

21 the proceedings from 4:42 p.m. to

22 4:49 p.m.)

23 MR. MORRIS: Okay. Mr. Scott, thank

24 you very much for your time. I have no

25 further questions.

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2 C E R T I F I C A T E

3 STATE OF NORTH CAROLINA)

4) ss.:

5 COUNTY OF WAKE)

6

7 I, LISA A. WHEELER, RPR, CRR, a

8 Notary Public within and for the State of New

9 York, do hereby certify:

10 That GRANT SCOTT, the witness whose

11 deposition is hereinbefore set forth, having

12 produced satisfactory evidence of

13 identification and having been first duly sworn

14 by me, according to the emergency video

15 notarization requirements contained in G.S.

16 10B-25, and that such deposition is a true

17 record of the testimony given by such witness.

18 I further certify that I am not

19 related to any of the parties to this action by

20 blood or marriage; and that I am in no way

21 interested in the outcome of this matter.

22 IN WITNESS WHEREOF, I have hereunto

23 set my hand this 21st day of January, 2021.

24 *Lisa Wheeler*

25 LISA A. WHEELER, RPR, CRR

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2 THE WITNESS: Thank you.

3 MR. CLARK: We will reserve our

4 questions.

5 THE WITNESS: I appreciate it, John.

6 MR. MORRIS: Take care. Thanks for

7 your time and your -- and your diligence.

8 I do appreciate it. Take care, guys.

9 THE REPORTER: Okay.

10 MR. CLARK: Thank you.

11 MR. HOGWOOD: No questions from us.

12 (Time Noted: 4:50 p.m.)

13

14 -----

15 GRANT SCOTT

16

17

18 Subscribed and sworn to before me

19 this day of 2021.

20 -----

21

22

23

24

25

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2 -----I N D E X-----

3 PAGE

4 EXAMINATION BY MR. MORRIS 7

5

6 -----EXHIBITS-----

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8 PAGE

9 EXHIBIT 1 Organizational Structure: 46

10 EXHIBIT 2 Unanimous Written Consent of 54

11 Directors In Lieu of Meeting

12 EXHIBIT 3 Letter to James A. Wright, 78

13 III, et al., from Gregory

14 EXHIBIT 4 Letter to James A. Wright, 96

15 Demo, December 24, 2020, with

16 Exhibit A Attachment

17 EXHIBIT 5 Letter to Jeffrey N. 105

18 Pomerantz from R. Charles

19 Miller, December 31, 2020

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22

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APPENDIX 13

Between

CLO HOLDCO, LTD.

And

HARBOURVEST DOVER STREET IX INVESTMENT L.P.

And

HARBOURVEST 2017 GLOBAL AIF L.P.

And

HARBOURVEST 2017 GLOBAL FUND L.P.

And

HV INTERNATIONAL VIII SECONDARY L.P.

And

HARBOURVEST SKEW BASE AIF L.P.

And

HIGHLAND CAPITAL MANAGEMENT, L.P.

And

LEE BLACKWELL PARKER, III

And

QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # 3058311

And

QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # 1469811

And

QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # 1470612

And

QUEST IRA, INC., FBO NEIL DESAI, ACCT. # 3059211

And

HIGHLAND CLO FUNDING, LTD.

And

HIGHLAND HCF ADVISOR, LTD.

MEMBERS AGREEMENT RELATING TO THE COMPANY

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THIS AGREEMENT is made the 15th day of November 2017

BETWEEN

- (1) **CLO HOLDCO, LTD.** whose registered office address is at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands;
- (2) **HARBOURVEST DOVER IX INVESTMENT L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (3) **HARBOURVEST 2017 GLOBAL AIF L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (4) **HARBOURVEST 2017 GLOBAL FUND L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (5) **HV INTERNATIONAL VIII SECONDARY L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (6) **HARBOURVEST SKEW BASE AIF L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (7) **HIGHLAND CAPITAL MANAGEMENT, L.P.** of 300 Crescent Court, Suite 700, Dallas, Texas 75201, USA
- (8) **LEE BLACKWELL PARKER, III** of 300 Crescent Court, Suite 700, Dallas, Texas 75201, USA
- (9) **QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # 3058311** of 17171 Park Row #100, Houston, Texas 77084, USA
- (10) **QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # 1469811** of 17171 Park Row #100, Houston, Texas 77084, USA
- (11) **QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # 1470612** of 17171 Park Row #100, Houston, Texas 77084, USA
- (12) **QUEST IRA, INC., FBO NEIL DESAI, ACCT. # 3059211** of 17171 Park Row #100, Houston, Texas 77084, USA

(together the "**Members**") and

- (13) **HIGHLAND CLO FUNDING, LTD.**, with registration number 60120 whose registered office is at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands (the "**Company**") and
- (14) **HIGHLAND HCF ADVISOR, LTD.**, whose registered address is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "**Portfolio Manager**").

WHEREAS:

- (A) The Company is a limited company incorporated under the laws of the Island of Guernsey on 30 March 2015.
- (B) The Company has been established to provide its investors with exposure to CLO Notes on both a direct basis and indirect basis and senior secured loans on an indirect basis, through the use of the investments described in its investment policy as set forth in the Offering Memorandum dated 15 November 2017, the (the "**Offering Memorandum**"), subject to the restrictions set forth therein.

- (C) The Members are the owners of the entire issued capital of the Company.
- (D) The Parties are entering into this Agreement to regulate the relationship between them and the operation and management of the Company.

OPERATIVE PROVISIONS

1. INTERPRETATION

In this Agreement, including the Schedule:

- 1.1 the following words and expressions shall have the following meanings, unless they are inconsistent with the context:

"Adherence Agreement" means the agreement under which a person agrees to be bound by the terms of this Agreement in the form substantially similar as set out in the Schedule;

"Advisers Act" shall mean the U.S. Investment Advisers Act of 1940, as amended from time to time, and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder;

"Affiliate" means, with respect to a person, (i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such person or (ii) any other person who is a director, officer or employee (a) of such person, (b) of any subsidiary or parent company of such person or (c) of any person described in clause (i) above. For the purposes of this definition, control of a person shall mean the power, direct or indirect, (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of such persons or (ii) to direct or cause the direction of the management and policies of such person whether by contract or otherwise. For purposes of this definition, the management of an account by one person for the benefit of any other person shall not constitute "control" of such other person and no entity shall be deemed an "Affiliate" of the Company solely because the administrator or its Affiliates serve as administrator or share trustee for such entity;

"Agreement" means this agreement together with the Schedule;

"Articles" means the articles of incorporation of the Company as amended from time to time;

"Business" means the business of the Company as described in Recital (B);

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for ordinary banking business in Guernsey;

"Directors" means the directors of the Company from time to time;

"CLO Holdco" means CLO Holdco, Ltd. (or any permitted successor to the business of CLO Holdco, Ltd. or interest in the Company);

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Directors" means the directors of the Company from time to time;

"Dover IX" means HarbourVest Dover Street IX Investment L.P. (or any permitted successor to the business of HarbourVest Dover Street IX Investment L.P. or any interest in the Company);

"DOL" shall mean the U.S. Department of Labor, or any governmental agency that succeeds to the powers and functions thereof.

"DOL Regulations" shall mean the regulations of the DOL included within 29 C.F.R. section 2510.3-101.

"Dover IX" shall mean HarbourVest Dover Street IX Investment L.P. (or any permitted successor to the business of HarbourVest Dover Street IX Investment L.P. or interest in the Company);

"ERISA" shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time;

"ERISA Member" shall mean a Member that (a) is a "benefit plan investor" (as such term is defined in the DOL Regulations as modified by section 3(42) of ERISA) subject to the fiduciary responsibility provisions of part 4 of title I of ERISA or is a "plan" (as such term is defined in section 4975(e) of the Code) subject to section 4975 of the Code or (b) is designated as an ERISA Member by the General Partner in writing on or before the date at which such ERISA Member is admitted to the Company;

"HarbourVest Entities" means: Dover IX; HarbourVest 2017 Global AIF L.P.; HarbourVest 2017 Global Fund L.P.; HV International VIII Secondary L.P.; and HarbourVest Skew Base AIF L.P. (or any of their respective permitted successors to their businesses or interests in the Company);

"Highland Principals" means: Highland Capital Management, L.P.; Lee Blackwell Parker, III, Quest IRA, Inc., fbo Lee B. Parker III Acct. # 3058311; Quest IRA, Inc., fbo Hunter Covitz Acct. # 1469811; Quest IRA, Inc., fbo Jon Poglitsch Acct. # 1470612; Quest IRA, Inc., fbo Neil Desai Acct. # 3059211 (or any of their respective permitted successors to their businesses or interests in the Company);

"Law" means the Companies (Guernsey) Law, 2008, as amended;

"Member" means a person whose name is from time to time entered in the register of members of the Company as the holder of shares in the Company;

"Parties" means the parties to this Agreement and any other person who agrees to be bound by the terms of this Agreement under an Adherence Agreement;

"Shares" means ordinary shares in the Company;

"Subsidiary" shall have the meaning ascribed to it in the Law;

"Subscription and Transfer Agreement" means the Subscription and Transfer Agreement, dated as of 15 November 2017, entered into by and among CLO HoldCo, Ltd. and each of the Members and acknowledged and agreed by the Company and the Portfolio Manager.

Any capitalized terms used herein without definition have the meanings specified in the Offering Memorandum.

- 1.2 any reference to the Parties being obliged to procure shall so far as they are able includes, without limitation, procuring by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company;
- 1.3 any reference to a person includes, where appropriate, that person's heirs, personal representatives and successors;
- 1.4 any reference to a person includes any individual, body corporate, corporation, firm, unincorporated association, organisation, trust or partnership;
- 1.5 any reference to time shall be to Guernsey time;
- 1.6 except where the context otherwise requires words denoting the singular include the plural and vice versa and words denoting any one gender include all genders;

1.7 unless otherwise stated, a reference to a Clause or a Schedule is a reference to a Clause or a Schedule to this Agreement; and

1.8 Clause headings are for ease of reference only and do not affect the construction of any provision.

2. THE BUSINESS OF THE COMPANY

2.1 The Parties hereby agree that the objects and purpose of the Company shall be to carry on the Business.

2.2 The Parties shall so far as they are able (including without limitation by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company) procure that (i) the Company's principal activities shall be the pursuit of the objects and purposes described in Clause 2.1 conducted in accordance with the provisions hereof and with the Offering Memorandum, the Subscription and Transfer Agreement and Articles of the Company and (ii) the Parties shall not take any action inconsistent with the provisions of the Offering Memorandum, including, without limitation the investment strategy set forth in the "Summary" and the applicable restrictions during and after the Investment Period and the suspension or termination of the Investment Period following a Key Person Event.

2.3 The Members shall (so long as they hold shares in the capital of the Company) use all reasonable endeavours to promote and develop the Business of the Company.

3. VOTING RIGHTS

3.1 The Parties agree that the following provisions of this Clause 3 shall apply during such period or periods as the Members parties hereto are Members.

3.2 The Parties shall procure that the Company shall not take any action at any meeting requiring the sanction of an ordinary or special resolution or by written resolution, in each case of the Directors or of the Members, without the affirmative vote or prior written consent, as applicable, of the Members totalling in the aggregate more than seventy-five percent (75%) of the Company, including, but not limited to, the following actions:

3.2.1 any issuance of new shares of the Company or a new class of shares of the Company or payment of any dividend by issuance of new shares of the Company, other than issuances of Shares pursuant to the Offering Memorandum and the Subscription and Transfer Agreement;

3.2.2 any alteration or cancellation of any rights of any Shares or of the Share capital of the Company,

3.2.3 any conversion or redemption of Shares, except pursuant to Clause 5.5,

3.2.4 any payment of commission in consideration for subscribing or agreeing to subscribe for any shares in the Company,

3.2.5 the creation of any lien on any Shares, except pursuant to the remedies in Clause 5.3. or

3.2.6 the suspension of the calculation of the NAV; other than a temporary suspension of the calculation of the NAV and NAV per Share by the Board of Directors during any period if it determines in good faith that such a suspension is warranted by extraordinary circumstances, including: (i) during any period when any market on which the Company's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (ii) during the existence of any state of affairs, including as a result of political, economic, military or monetary events or any circumstances outside the control of the Portfolio Manager or the Company, as a result of which,

in the reasonable opinion of the Portfolio Manager, the determination of the value of the assets of the Company, would not be reasonably practicable or would be seriously prejudicial to the Members taken as a whole; (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Company's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Company cannot reasonably be accurately ascertained within a reasonable time frame; (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the Portfolio Manager, be effected at normal rates of exchange; or (v) automatically upon liquidation of the Company.

4. **ADVISORY BOARD.**

- 4.1 Composition of Advisory Board. The Company shall establish an advisory board (the "**Advisory Board**") composed of two individuals, one of whom shall be a representative of CLO Holdco and one of whom shall be a representative of Dover IX (or, in each case, or any permitted successor to the interest in the Company of such Member). No voting member of the Advisory Board shall be a controlled Affiliate of the Portfolio Manager (including, for the avoidance of doubt, following a permitted transfer of CLO Holdco's interest to an Affiliate of the Portfolio Manager, if applicable), it being understood that for the purposes of this sentence none of CLO Holdco, its wholly-owned subsidiaries nor any of their respective directors or trustees shall be deemed to be a controlled Affiliate of the Portfolio Manager due to their pre-existing non-discretionary advisory relationship with the Portfolio Manager. None of the members of the Advisory Board shall receive any compensation (other than reimbursement for reasonable and documented out-of-pocket expenses) in connection with their position on the Advisory Board. The Company shall bear any fees, costs and expenses related to the Advisory Board.
- 4.2 Meetings of Advisory Board; Written Consents. The Advisory Board shall meet with the Portfolio Manager at such times as requested by the Portfolio Manager from time to time. The quorum for a meeting of the Advisory Board shall be all of its members entitled to vote. All actions taken by the Advisory Board shall be (i) by a unanimous vote of all of the members of the Advisory Board in attendance in a meeting at which a quorum is present and entitled to vote and not abstaining from voting or (ii) by a written consent in lieu of a meeting signed by all of the members of the Advisory Board entitled to consent and not abstaining from consenting. Meetings of the Advisory Board may be held in person, by telephone or by other electronic device.
- 4.3 Functions of Advisory Board. The Advisory Board shall provide (or determine not to provide) any consents or approvals expressly contemplated by this Agreement and the Offering Memorandum to be provided by the Advisory Board and, at the request of the Portfolio Manager in its sole discretion, provide general advice (which, for the avoidance of doubt, shall be non-binding) to the Portfolio Manager or the Company with regard to Company activities and operations and other matters. For the avoidance of doubt, no consent or approval of the Advisory Board shall be required for any action or determination expressly permitted or contemplated hereunder or in the Offering Memorandum and not conditioned on such a consent or approval. The Portfolio Manager shall not act contrary to the advice of the Advisory Board with respect to any action or determination expressly conditioned herein or in the Offering Memorandum on the consent or approval of the Advisory Board. Without limiting the foregoing, the Advisory Board shall be authorized to give any approval or consent required or deemed necessary or advisable under the Advisers Act on behalf of the Company and the Members, including under Section 206(3) of the Advisers Act. The Portfolio Manager may from time to time in its discretion request the Advisory Board to review and ratify certain Company matters. The consent of the Advisory Board shall be required to approve the following actions: (i) any extension of the Investment Period; (ii) any extension of the Term (other than an automatic extension following an extension of the Investment Period that has been approved by the Advisory Board); (iii) any allotment of additional equity securities by the Company; and (iv) any investment in a Related Obligation or any other transaction between the Company or any entity in which the Company holds a direct or indirect interest, on the one hand, and Highland or any of its Affiliates, on the other hand and (v) other matters as set forth in the Offering

Memorandum. Notwithstanding the foregoing or anything to the contrary set forth herein, no transaction that is specifically authorized in the governing documents of the Company shall require approval of the Advisory Board, including, without limitation, sales or securitizations of all or a portion of the Company's loan portfolio into new Qualifying CLOs (i.e. the transfer of warehoused assets into new Qualifying CLOs), investments in CLO Notes issued by CLOs managed by Highland Affiliates, and the NexBank Credit Facility and any Permitted NexBank Credit Facility Amendments, in each case as described in the Offering Memorandum. Any such approval, consent or ratification given by the Advisory Board shall be binding on the Company and the Members. Neither the Advisory Board nor any member thereof shall have the power to bind or act for or on behalf of the Company in any manner, and no shareholder who appoints a member of the Advisory Board shall be deemed to be an Affiliate of the Company or Highland solely by reason of such appointment.

- 4.4 Term of Members of Advisory Board. A member of the Advisory Board shall be deemed removed from the Advisory Board (i) if such member is no longer an officer, director, manager, trustee, employee, consultant or other representative of CLO Holdco or Dover IX, as applicable, or their respective Affiliates and shall be replaced as soon as practicable with a representative of CLO Holdco or Dover IX, or their respective Affiliates, as applicable, or (ii) if the Member represented by such member either becomes a Defaulting Member or such member ceases to be eligible to represent such Member pursuant to Clause 4.1.
- 4.5 No Duties to Other Members. No Advisory Board member who is the representative of any Member shall, to the extent permitted by law, owe a fiduciary duty to the Company or any other Member (other than the duty to act in good faith), and may, to the fullest extent permitted by law, in all instances act in such member's own interest and in the interest of the Member that appointed such member.

5. **DEFAULTING MEMBERS**

- 5.1 In the event any Member defaults in its obligation to pay the full amount of the purchase price of Shares called for settlement under the Subscription and Transfer Agreement on the applicable Settlement Date (such unpaid amount, an "**Outstanding Settlement Amount**"), the Portfolio Manager, on behalf of the Company, shall provide written or telephonic notice of such default to such Member. If such default is not cured within 5 business days after written (or if applicable telephonic or email) notice thereof given by the Portfolio Manager, on behalf of the Company, has been received by such Member, such Outstanding Settlement Amount shall automatically accrue interest on a retroactive basis from the date such Outstanding Settlement Amount was due at 12% (the "**Default Interest Rate**") (which interest, once paid, shall not be applied to the purchase of the unsettled Shares of such Member, but which will upon receipt be distributed pro rata to those Members who have funded any such Outstanding Settlement Amounts pursuant to this Clause 5). No such Shares which have failed to be settled will be issued to any Member until settlement of the full amount of the purchase price has been made. In addition, if such default is not cured within 10 business days after written or telephonic notice thereof given by the Portfolio Manager, on behalf of the Company, has been received by such Member (a "**Defaulting Member**"), the following provisions shall apply:
- 5.2 Whenever the vote or consent of the Defaulting Member would otherwise be required or permitted hereunder or under the Articles, the Defaulting Member shall not be entitled to participate in such vote or consent in respect of his existing shareholding and with respect to any representative of such Defaulting Member on the Advisory Board, and such vote or consent shall be calculated as if such Defaulting Member were not a Member and, as applicable, any representative of such Defaulting Member on the Advisory Board were not a member of the Advisory Board.
- 5.3 The Portfolio Manager, on behalf of the Company, may pursue and enforce all rights and remedies available, including the commencement of legal proceedings against the Defaulting Member to collect the Outstanding Settlement Amounts, together with interest thereon for the account of the Company from the date due at the Default Interest Rate, plus the costs and expenses of collection (including attorneys' fees and expenses).

- 5.4 The Portfolio Manager, on behalf of the Company, may (at the sole cost of the Defaulting Member) borrow funds from any person (other than the Defaulting Member or its Affiliates) to cover such shortfall and/or advance all or a portion of the Defaulting Member's Outstanding Settlement Amount to the Company on behalf of the Defaulting Member, and such advance shall be repaid by the Defaulting Member to the Portfolio Manager, on behalf of the Company, with interest for the account of the Portfolio Manager, on behalf of the Company, on the amount outstanding from time to time commencing on the date of the advance at the Default Interest Rate. To the extent the Portfolio Manager, on behalf of the Company, advances funds to the Company on behalf of a Defaulting Member, all distributions from the Company that would otherwise be made to the Defaulting Member shall be paid to the Portfolio Manager, on behalf of the Company, (with any such amounts being applied first against accrued but unpaid interest and then against principal), until all amounts payable by the Defaulting Member to the Portfolio Manager, on behalf of the Company, under this Clause 5.4 (including interest) have been paid in full.
- 5.5 The Portfolio Manager, on behalf of the Company, may elect, upon notice to the Defaulting Member, to redeem the Defaulting Member's shares in an amount equal to 50% of the outstanding amount existing as of the date of the default at a price of \$0.0001 per Share. Thereupon, the commitment of the Defaulting Member under the Subscription and Transfer Agreement shall be zero, the Defaulting Member shall not be obligated to make any further settlements, the voting capital of such Defaulting Member and of each other Member shall be re-determined as of the date of such default to reflect the new commitment of the Defaulting Member, and the Portfolio Manager shall revise the books and records of the Company to reflect the reduction of the commitment of the Defaulting Member. The Members agree (x) that the damages suffered by the Company as the result of a failure by a Member to settle a commitment to purchase Shares that is required by this Agreement cannot be estimated with reasonable accuracy and (y) that the foregoing provisions of this Clause 5.5 shall act as liquidated damages for the default by the Defaulting Member (which each Member hereby agrees are reasonable).
- 5.6 The Board may offer to the non-Defaulting Members (pro rata in accordance with their respective Commitments) the option of purchasing the Defaulting Member's unsettled Shares on the terms set forth in the applicable Settlement Notice (as defined in the Subscription and Transfer Agreement).
- 5.7 At the election of the Board, distributions of dividends otherwise payable to the Defaulting Member under the Articles shall not be paid to the Defaulting Member, but instead shall be applied against the amount of the Outstanding Settlement Amount (plus interest at the Default Interest Rate and related costs); provided that any amounts so applied shall be deemed to have been distributed to the Defaulting Member under the Articles.
- 5.8 The Portfolio Manager may send an amended or new Settlement Notice to the Members other than the Defaulting Member in an amount equal to the Defaulting Member's Outstanding Settlement Amount and otherwise in accordance with the Subscription and Transfer Agreement.
- 5.9 Each Defaulting Member further appoints the Portfolio Manager as agent and attorney-in-fact for the Defaulting Member and hereby grants to the Portfolio Manager an irrevocable power of attorney to take all actions necessary on its behalf to sell, assign, or transfer the commitment to purchase unsettled Shares of such Defaulting Member pursuant to Clause 5.6 or as necessary on its behalf to effect the other remedies or rights set forth in this Clause 5; provided that the Portfolio Manager shall not bind any Defaulting Member to an indemnification or other similar obligation which guarantees the financial performance of the Company or which exceeds the ability of the Defaulting Member to provide indemnification under applicable law.

6. **TRANSFERS OR DISPOSALS OF SHARES**

- 6.1 No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio

- Manager, which consent shall be in the sole discretion of the Portfolio Manager; provided that no such Transfer shall be made unless in the opinion of counsel reasonably satisfactory to the Portfolio Manager (who may be counsel for the Company, and which requirement for an opinion may be waived, in whole or in part, in the sole discretion of the Portfolio Manager) that:
- 6.1.1 such Transfer would not require registration under the Securities Act or any state securities or "Blue Sky" laws or other laws applicable to the Shares to be assigned or transferred and is conducted in conformance with the restrictions set forth in the Offering Memorandum;
 - 6.1.2 such Transfer would not be reasonably likely to cause the Company to be subject to tax in any jurisdiction other than of its incorporation on a net income basis, not be reasonably likely to cause the Company to become subject to registration as an investment company under the Investment Company Act of 1940, as amended;
 - 6.1.3 such Transfer would not cause the Company to be considered to be an entity whose underlying assets are considered to include "plan assets" by reason of investment by an "employee benefit plan" or "plan" in such entity pursuant to the U.S. Plan Assets Regulations; and
 - 6.1.4 such sale, assignment, disposition or transfer would not to cause all or any portion of the assets of the Company to constitute "plan assets" under ERISA or the Code.
- 6.2 Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal) a Member must first offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter. The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred. If the other Members do not accept the offer, the Member may (subject to complying with the other Transfer restrictions in this Agreement) Transfer the applicable Shares that such Members have not elected to purchase to a third party at a price equal to or greater than the price described in the offer letter, provided that if the Member has not (a) entered into a definitive agreement to effect such sale within 90 days after the expiration of the period that the other Members have to accept the offer in the offer letter or (b) consummated the sale within 120 day after the entry into the definitive agreement to consummate the sale, it must comply with these right of first refusal procedures again. Any Member (other than the Member proposing to Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to any other Member (subject to complying with the other Transfer restrictions in this Agreement), any initial Member (other than the Member proposing to Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to an Affiliate (subject to complying with the other Transfer restrictions in this Agreement), and CLO Holdco and the Highland Principals (unless such Member is the Member proposing the Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to Highland, an Affiliate of Highland or other Highland Principals (subject to complying with the other Transfer restrictions in this Agreement).
- 6.3 No Highland Principal may transfer his or its interests in the Company other than (i) to a trust or other tax or estate planning vehicle or (ii) to the Portfolio Manager, its Affiliates or another Highland Principal upon the termination of such Highland Principal's (or the beneficial owner of such Highland Principal, if applicable) employment by Highland Capital Management, L.P.
- 6.4 Any transferor of any Share shall remain bound by the terms of this Agreement applicable to it prior to such transfer and that nothing in this Agreement shall constitute a waiver of any rights a Party to this Agreement may have by reason of a breach of this Agreement by a transferor prior to transfer. The transferor and/or the transferee shall bear all costs of any Transfer.
- 6.5 The Parties agree not to Transfer their Shares to any person unless such transferee agrees to be bound by the terms of this Agreement.
- 6.6 All Adherence Agreements executed pursuant to this Clause shall be executed by the transferee or allottee and each Party.

7. **CONFIDENTIALITY**

- 7.1 Each Party agrees to keep any information received by it pursuant to this Agreement or relating to the Business as confidential and not (save with the relevant Party's consent or as may be required by Law or the rules of any regulatory authority or any stock exchange) disclose to any person such information.
- 7.2 Notwithstanding the foregoing, the Parties agree that the HarbourVest Entities may disclose to their limited partners and prospective limited partners (including any agents of such limited partners or prospective limited partners), clients and applicable governmental agencies (a) the name and address of the Company, (b) the capital commitment and the remaining capital commitment, (c) the net asset value of such HarbourVest Entity's interest in the Company, (d) the amount of distributions that have been made to such HarbourVest Entity by the Company and the amount of contributions that have been made by such HarbourVest Entity to the Company, (e) such ratios and performance information calculated by such HarbourVest Entity using the information in clauses (a) through (d) above, including the ratio of net asset value plus distributions to contributions (i.e., the "multiple") and such HarbourVest Entity's internal rate of return with respect to its investment in the Company, and (f) tax information with respect to the Company.

8. **DIVIDENDS**

- 8.1 The Company agrees that it shall not, and the Portfolio Manager agrees it shall not cause the Company to, make any dividends except pursuant to the section titled "Summary—Dividend Policy" of the Offering Memorandum.

9. **TERM OF THE COMPANY**

- 9.1 Each Party agrees to cause the winding up and dissolution of the Company after the ten year anniversary of the date hereof (the "**Term**"); provided that the Portfolio Manager, in its reasonable discretion, may postpone dissolution of the Company for up to 180 days in order to facilitate orderly liquidation of the investments; provided, further, that the Term shall be automatically extended for any amount of time for which the Investment Period may be extended.
- 9.2 Notwithstanding the foregoing, the Term may be extended with the consent of the Portfolio Manager and the Advisory Board for up to two successive periods of one year each.

10. **ERISA MATTERS**

- 10.1 The Portfolio Manager, the Company and each Member shall use their reasonable best efforts to conduct the affairs and operations of the Company so as to limit investment in the Company by "benefit plan investors" (within the meaning of the DOL Regulations as modified by section 3(42) of ERISA) to less than the U.S. Plan Threshold. In the event the U.S. Plan Threshold is met or exceeded, the Portfolio Manager, on behalf of the Company, may require any Non-Qualified Holder that is a U.S. Plan Investor to sell or transfer their Shares to a person qualified to own the same that is not a U.S. Plan Investor within 30 days and within such 30 days and to provide the Company with satisfactory evidence of such sale or transfer such that such sale or transfer, together with other sale or transfers pursuant to this Clause, would result in the investment in the Company by "benefit plan investors" (within the meaning of the DOL Regulations as modified by section 3(42) of ERISA) to be less than the U.S. Plan Threshold. Where the conditions above are not satisfied within 30 days after the serving of the notice to transfer, such Non-Qualified Holder will be deemed, upon the expiration of such 30 days, to have forfeited their Shares.

11. **TAX MATTERS**

- 11.1 PFIC. For each fiscal year of the Company, the Company will no later than 120 days after the end of such fiscal year, commencing with the first fiscal year for which the Company is determined to be a PFIC (a "passive foreign investment company"), furnish to each of the

HarbourVest Entities (x) all information necessary to permit such HarbourVest Entity or any of its partners to complete United States Internal Revenue Service Form 8621 with respect to their interests in the Company and (y) a PFIC Annual Information Statement under section 1295(b) of the Code with respect to the Company; provided that if the Company is unable to furnish such final information and Statement within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information and Statement on or before the 120th day after the end of such fiscal year.

- 11.2 CFC. The Company shall furnish to each of the HarbourVest Entities within 120 days after the end of each fiscal year of the Company, a United States Internal Revenue Service Form 5471 for such fiscal year, completed for all information concerning the Company required to be filed by such HarbourVest Entity or any of its partners (i.e., all portions applicable to the relevant category of filer other than page 1 items A-D and page 2 Schedule B), to the extent such Form 5471 is required to be filed by such HarbourVest Entity or any of its partners; provided that if the Company is unable to furnish such final information within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of each fiscal year.
- 11.3 Other Tax Information. The Company shall furnish to each of the HarbourVest Entities (a) within 120 days after the end of each fiscal year of the Company such other information reasonably requested by the HarbourVest Entities that any HarbourVest Entity may require in order for it or any of its partners to comply with its U.S. federal income tax reporting obligations with respect to its interest in the Company; provided that if the Company is unable to furnish such final information within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of such fiscal year and (b) promptly upon request such other information reasonably requested by such HarbourVest Entity in order to withhold tax or to file tax returns and reports or to furnish tax information to any of its partners with respect to the Company.
- 11.4 Withholding and Other Taxes. The Company will use reasonable best efforts to acquire investments that will not result in withholding or other taxes being imposed directly or indirectly on the Company by any jurisdiction with respect to income or distributions from such investments.

12. **AMENDMENTS TO CERTAIN AGREEMENTS**

- 12.1 The Portfolio Manager and the Company shall not amend or terminate, or agree to amend or terminate, the Memorandum or Articles of Incorporation of the Company or that certain Portfolio Management Agreement between the Portfolio Manager and the Company dated as of the date hereof (the "**Management Agreement**") without the consent of the Parties.
- 12.2 The Portfolio Manager agrees that it shall not assign its rights, duties and obligations under the Management Agreement without the consent of the Members totalling in the aggregate more than seventy-five percent (75%) of the Company. Notwithstanding the foregoing, the Portfolio Manager may, without the consent of the Members, assign any of its rights or obligations under the Management Agreement to an Affiliate; provided that such Affiliate (A) has demonstrated ability, whether as an entity or by its personnel, to professionally and competently perform duties similar to those imposed upon the Portfolio Manager pursuant to the Management Agreement, (B) has the legal right and capacity to act as Portfolio Manager thereunder and (C) shall not cause the Company or the pool of collateral to become required to register under the provisions of the Investment Company Act and such action does not cause the company to be subject to tax in any jurisdiction outside of its jurisdiction of incorporation.
- 12.3 The Company agrees that it shall not hire any portfolio manager without the consent of the Parties and such new portfolio manager shall be required to join and abide by this Agreement.

13. **FINANCIAL REPORTS**

- 13.1 The books and records of account of the Company shall be audited as of the end of each fiscal year of the Company by a nationally recognized independent public accounting firm selected by

the Portfolio Manager that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules. During the Term, the Portfolio Manager or the Company shall prepare and mail, deliver by fax, email or other electronic means or otherwise make available a financial report (audited in the case of a report sent as of the end of a fiscal year and unaudited in the case of a report sent as of the end of a quarter) to each Member on or before the 120th day after the end of each fiscal year and the 45th day after the end of each of the first three quarters of each fiscal year, setting forth for such fiscal year or quarter (a) the assets and liabilities of the Company as of the end of such fiscal year or quarter; (b) the net profit or net loss of the Company for such fiscal year or quarter; and (c) such Member's closing capital account balance as of the end of such fiscal year or quarter; provided that if the Portfolio Manager or the Company is unable to furnish final information with respect to any of the above, then the Portfolio Manager or the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of each fiscal year and the 45th day after the end of the first three quarters of each fiscal year. On or before the 60th day after the end of each fiscal year, the Portfolio Manager or the Company shall provide to each Member an unaudited draft of the financial report for such fiscal year.

13.2 After the end of each fiscal year or quarter, the Portfolio Manager or the Company shall cause to be delivered to the Advisory Board a reasonably detailed summary of the expenses incurred by the Company during such period.

14. **TERMINATION AND LIQUIDATION**

14.1 Save as provided for in Clause 13.2, this Agreement shall terminate:

14.1.1 when one Party holds all the Shares;

14.1.2 when a resolution is passed by the Company's Members or creditors, or an order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the Company's creditors, Members or other contributors; or

14.1.3 with the written consent of all the Parties.

14.2 The following provisions of this Agreement remain in full force after termination: Clause 1 (Interpretation), Clause 7 (Confidentiality), this Clause, Clause 14 (Whole Agreement), Clause 16 (Assignments), Clause 17 (Variation and Waiver), Clause 18 (Service of Notice), Clause 19 (General) and Clause 21 (Governing Law and Jurisdiction).

14.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties may have accrued under it.

14.4 Where the Company is to be wound up and its assets distributed, the Parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

14.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;

14.4.2 the Company shall not enter into any new contractual obligations;

14.4.3 the Company is dissolved and its assets are distributed as soon as practical; and

14.4.4 any other proprietary information belonging to or originating from a Party shall be returned to it by the other Parties.

15. WHOLE AGREEMENT

- 15.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.
- 15.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or warranty of any person other than as expressly set out in this Agreement or those documents.
- 15.3 Nothing in this Clause 14 operates to limit or exclude any liability for fraud.

16. STATUS OF AGREEMENT

- 16.1 Each Party shall, to the extent that it is able to do so, exercise its voting rights and other powers in relation to the Company to procure that the provisions of this Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the Agreement.
- 16.2 If any provision in the memorandum of incorporation of the Company or the Articles conflicts with any provision of this Agreement, the provisions of this Agreement shall prevail as between the Parties. Each of the Parties shall, to the extent that it is able to do so, exercise its voting rights and other powers in relation to the Company to procure the modification of the memorandum of association of the Company or the Articles (as the case may be) in order to eliminate the conflict, but this Agreement shall not itself constitute a modification of the memorandum of association of the Company or the Articles.

17. ASSIGNMENTS

Save as expressly permitted by this Agreement, no person may assign, or grant any security interest over, any of its rights under this Agreement or any document referred to in it without the prior written consent of the Parties.

18. VARIATION AND WAIVER

- 18.1 A variation of this Agreement shall be in writing and signed by or on behalf of the Parties.
- 18.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.
- 18.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.

19. SERVICE OF NOTICE

- 19.1 Any notice required to be given by any of the Parties may be sent by post or facsimile to the address and facsimile number of the addressee as set out in this Agreement, in either case marked for the attention of the relevant person named below, or to such other address and/or facsimile number and/or marked for the attention of such other person as the addressee may from time to time have notified for the purposes of this Clause.

- 19.1.1 to the Company:
Address:
First Floor, Dorey Court, Admiral Park
St Peter Port, Guernsey GY1 6HJ
Channel Islands

- 19.1.2 to CLO Holdco:

Address:
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
Attn: General Counsel
Tel: +1 (972) 628-4100
Email: Notices@highlandcapital.com

19.1.3 to any HarbourVest Entity:

Address:
c/o HarbourVest Partners, LLC
One Financial Center, 44th Floor
Boston, MA 02111
USA
Attn: Michael Pugatch
Tel: +1 (617) 348-3712
F
Email: mpugatch@harbourvest.com

19.1.4 to any other Party: by post or hand delivery only to the address specified in the register of members of the Company.

19.2 Communications sent by post shall be deemed to have been received 24 hours after posting. Communications sent by facsimile transmission shall be deemed to have been received at the time the transmission has been received by the addressee **PROVIDED THAT** if the facsimile transmission, where permitted, is received after 5.00pm or on a day which is not a Business Day, it shall be deemed to have been received 11.00am the Business Day following thereafter.

19.3 In proving service by post it shall only be necessary to prove that the notice was contained in an envelope which was duly addressed and posted in accordance with this Clause and in the case of facsimile transmission it shall be necessary to prove that the facsimile was duly transmitted to the correct number.

20. **GENERAL**

20.1 Each of the Parties hereby agree not to enter into or abide by any agreement whether written or oral with any one or more of the other Parties in respect of the voting of Shares or the submission of Member resolutions to any Members for voting by them, or otherwise to direct or influence, or attempt to direct or influence, the day-to-day management of the Company, either directly or indirectly, other than in order to comply with the other terms of this Agreement or the Articles. In this regard, each of the Parties agrees to not to direct or influence or to attempt to direct or influence any of the Directors through any employment relationship that the Directors may have outside of the Company other than in order to comply with the other terms of this Agreement or the Articles. Each of the Parties hereby agree that this provision shall continue to apply to them whether or not they are or remain a Member.

20.2 Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

20.3 The Parties are not in partnership with each other and there is no relationship of principal and agent between them.

20.4 All transactions entered into between any Party and the Company shall be conducted in good faith and on the basis set out or referred to in this Agreement or, if not provided for in this Agreement, as may be agreed by the Parties and, in the absence of such agreement, on an arm's length basis.

20.5 Each Party shall at all times act in good faith towards the other Parties and shall use all reasonable endeavours to ensure that this Agreement is observed.

20.6 Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Parties may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

20.7 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document. This Agreement may not be amended except with the consent of each Party.

21. STATUS OF AGREEMENT

21.1 The Parties shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and its Business to be administered as provided in this Agreement.

21.2 If there is an inconsistency between any of the provisions of this agreement and the provisions of the Articles, the provisions of this agreement shall prevail as between the Parties.

22. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the Island of Guernsey and each of the Parties submits to the non-exclusive jurisdiction of the Royal Courts of the Island of Guernsey.

[Signature Page Follows.]

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed the day and year first before written.

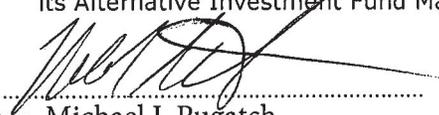
SIGNED for and on behalf of **CLO HOLDCO, LTD.**

By:.....
Name: Grant Scott
Title: Director

A handwritten signature in blue ink, appearing to be 'Grant Scott', is written over the signature line and extends upwards into the text area.

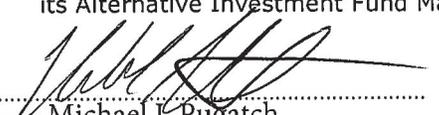
SIGNED for and on behalf of
HARBOURVEST DOVER STREET IX INVESTMENT L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager

By: 
Name: Michael J. Pugatch
Title: Authorized Person

SIGNED for and on behalf of
HARBOURVEST 2017 GLOBAL AIF L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager

By: 
Name: Michael J. Pugatch
Title: Authorized Person

SIGNED for and on behalf of
HARBOURVEST 2017 GLOBAL FUND L.P.

By: HarbourVest 2017 Global Associates L.P.,
its General Partner

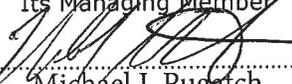
By: HarbourVest GP LLC,
its General Partner

By: HarbourVest Partners, LLC,
its Managing Member

By: 
Name: Michael J. Pugatch
Title: Managing Director

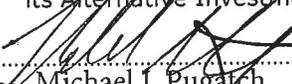
SIGNED for and on behalf of
HV INTERNATIONAL VIII SECONDARY L.P.

By: HIPEP VIII Associates L.P.
Its General Partner
By: HarbourVest GP LLC
Its General Partner
By: HarbourVest Partners, LLC
Its Managing Member


By:
Name: Michael J. Pugatch
Title: Managing Director

SIGNED for and on behalf of
HARBOURVEST SKEW BASE AIF L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager


By:
Name: Michael J. Pugatch
Title: Authorized Person

SIGNED



.....
Lee Blackwell Parker, III

SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

Read and approved



By: 
Name: *Emmanuel Maciel*
Title: *Transactions Operator*

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGGLITSCH, ACCT. # 1470612

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:.....
Name:
Title:

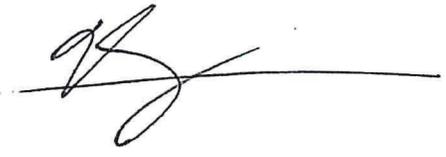
SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By: 
Name: Emmanuel Maier
Title: Transactions Supervisor

Read & Approved



SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By: 
Name: *Emmanuel Magar*
Title: *Transactions Supervisor*

Read and Approved:
 *11/7/17*

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

By:.....
Name:
Title:

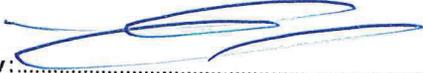
SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

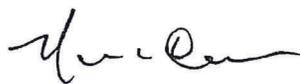
By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By: 
Name: Emmanuel Madet
Title: Transactional Supervisor

Read and approved


SIGNED for and on behalf of
HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.,
its General Partner

A handwritten signature in blue ink, appearing to be 'J. Dondero', is written over a dotted line. The signature is fluid and cursive.

By:

Name: James Dondero

Title: President

SIGNED for and on behalf of
HIGHLAND HCF ADVISOR, LTD.



By:

Name: James Dondero

Title: President

SIGNED for and on behalf of
HIGHLAND CLO FUNDING, LTD.

By: 

Name: William Scott

Title: Director

SCHEDULE

Adherence Agreement

THIS ADHERENCE AGREEMENT is made on [●] 200[●]

BETWEEN:

- (1) [●] of [●] (the "**Covenantor**");
- (2) CLO HOLDCO, LTD. of [] (a "**Member**");
- (3) [●] of [] (a "**Member**");
- (4) [●] of [] (a "**Member**");
- (5) HIGHLAND CLO FUNDING, LTD., with registration number 60120 whose registered office is at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands (the "**Company**")
- (6) HIGHLAND HCF ADVISOR, LTD., registered address is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "**Portfolio Manager**").

RECITAL

This Agreement is supplemental to the members agreement made on November 15 2017 between the Members, the Portfolio Manager and the Company (the "**Members Agreement**").

IT IS HEREBY AGREED as follows:

1. The Covenantor hereby confirms that he has been supplied with a copy of the Members Agreement and hereby covenants with each of the parties thereto to observe, perform and be bound by all the terms of the Members Agreement as if it were a party thereto.
2. Each of the other parties to the Members Agreement hereby covenants with the Covenantor that the Covenantor shall be entitled to the benefit of the terms of the Members Agreement as if he were a party thereto.
3. This Agreement shall be governed by and construed in accordance with Guernsey law.

IN WITNESS of which this Agreement has been executed by the Covenantor and each of the parties to the Members Agreement on the date shown above.