Docket #0017 Date Filed: 6/28/2021

CASE NO. 3:21-CV-00879-K

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,

(Debtor)

JAMES DONDERO, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., NEXPOINT ADVISORS, L.P., THE DUGABOY INVESTMENT TRUST, THE GET GOOD TRUST, AND NEXPOINT REAL ESTATE PARTNERS, LLC,

(Appellants)

v.

HON. STACEY G.C. JERNIGAN AND HIGHLAND CAPITAL MANAGEMENT, L.P.

(Appellees)

On appeal from the United States Bankruptcy Court for the
Northern District of Texas, Dallas Division

APPENDIX TO APPELLANTS' BRIEF

Respectfully submitted by:
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APPENDIX TO APPELLANTS' BRIEF

Appellants James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC ("Appellants") file this Appendix to their Brief:

TAB	DESCRIPTION	APP. #
1	June 10, 2021 Transcript	APP. 1-91
2	June 17 Order	APP. 92-104

Dated: June 28, 2021

By: */s/ Michael J. Lang*
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CERTIFICATE OF SERVICE

The undersigned certifies that on June 28, 2021, a true and correct copy of the above and foregoing document was served on all parties of record via the Court's e-filing system.

/s/ Michael J. Lang
Michael J. Lang

TAB 1

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

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Thursday, June 10, 2021 9:30 a.m. Docket MOTION TO COMPEL COMPLIANCE WITH BANKRUPTCY RULE 2015.3 FILED BY GET GOOD TRUST AND THE DUGABOY INVESTMENT TRUST (2256)
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., Defendant.	**Adversary Proceeding 21-3006-sgj** DEFENDANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER AND BRIEF IN SUPPORT [15]
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, TO v. HCRE PARTNERS, LLC N/K/A NEXPOINT REAL ESTATE PARTNERS, LLC, Defendant.	**Adversary Proceeding 21-3007-sgj** DEFENDANT'S MOTION FOR LEAVE TO AMEND ANSWER TO PLAINTIFF'S COMPLAINT [16]

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

WEBEX APPEARANCES:

For the Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300
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For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - JUNE 10, 2021 - 9:44 A.M.

THE COURT: All right. Let me change my stacks here. I will now hear what was Matter No. 1 on the docket, Highland Capital, Case No. 19-34054. We have a motion from the Dugaboy and Get Good Trusts seeking compliance with Bankruptcy Rule 2015.3.

Who do we have appearing for the trusts this morning?

MR. DRAPER: Douglas Draper, Your Honor.

THE COURT: All right. And for the Debtor this morning?

MR. POMERANTZ: Good morning, Your Honor. Jeffrey Pomerantz; Pachulski Stang Ziehl & Jones; on behalf of the Debtor.

THE COURT: All right. Do we have any other parties wishing to make an appearances? These are the only parties who filed pleadings, but I'll go ahead and ask if anyone wants to appear for any reason.

MR. CLEMENTE: Good morning, Your Honor. It's Matt Clemente at Sidley on behalf of the Committee. I'm here.

THE COURT: All right. Thank you, Mr. Clemente.

All right. Mr. Draper, how did you want to proceed?

MR. DRAPER: I'd just -- I think the issue is primarily a legal issue, Your Honor.

THE COURT: Uh-huh.

MR. DRAPER: So we've filed with the Court our

response to the Debtor's opposition, I have some comments I'd I like to make, and just leave it at that. I think -- as I said, I believe the issue is purely a legal issue --

THE COURT: Uh-huh. Okay.

MR. DRAPER: -- and can go from that.

THE COURT: All right.

MR. DRAPER: All right. We are here -- thank you, Your Honor. Can I start?

THE COURT: Yes, you may.

MR. DRAPER: Thank you. We're here before the Court today on what should be a rather routine matter. All I'm asking the Court to do is to require the Debtor to do what it should have done when the case was filed and is required pursuant to Bankruptcy Rule 2015.3.

2015.3 uses the term "shall" and requires the Debtor to file an official form -- and this is important, because I'm going to come back to the official form -- with respect to the value, operations, and profitability of each entity in which the Debtor has a substantial or controlling interest.

The reports, the Rule says, shall be filed seven days before the first meeting of creditors and every six months thereafter.

Under 2015.3(d), I recognize a court may, after notice and a hearing, modify the reporting requirement. No request has been made by counsel for the Debtor, who I will stipulate

knows the Rules, are experienced, and understand that the rule existed the day they came into the case. And quite frankly, what we have now is, from what I can see, an intentional decision not to file the report.

As the Court knows, this matter was brought before this Court in February, when the confirmation hearing was held. And if the Court will recall, Mr. Seery's comment was (a) it slipped through the cracks; and (b) he implied that it would be done. That was February. I had hoped, and I think everybody had hoped, that Mr. Seery, Highland, and Debtor's counsel would be so embarrassed by the fact that they didn't file [sic] the rule that they would have either (a) filed [sic] the rule; or (b) sought -- sought a waiver of the rule. They did neither.

Now, let's -- let's go through the 2015.3(d). There are two items that are not exclusive, and so I recognize it. The first is that they can't do it, and second is with respect to the information is publicly available. If you look at the cases that the Debtor has cited in support of their position that courts have waived compliance with the rule, you'll note that three of the four cases deal with first day motions when in fact they ask for extensions of time to file their schedule, Statement of Financial Affairs, and other things. These are normal first day motions. I understand the extension in that case. And quite frankly, those extensions

are -- fall into the "I can't do it."

The only excuse the Debtor has offered, other than their response to date, was, oh, I forgot, or it slipped through the cracks. That is not a legitimate excuse. It never has been and never will be, and should not be countenanced by the Court.

And so let's start with the after-the-fact excuses offered by the Debtor. The first is the bad guy defense -- *i.e.*, Dugaboy is a Dondero entity; they're asking for this information for nefarious purposes. That has to -- that should be completely disregarded by the Court. This is a systematic issue that neither you nor I nor the Debtor's counsel put in the Code or put in the Rules. It is a requirement, it's systematic, and we, as counsel and people acting on behalf of the estate and sort of people who oversee the system, should insist that this be filed. The bad guy defense is not an excuse. And quite frankly, this is information that is required.

So what I'm asking for today is not gamesmanship. I don't think it is ever gamesmanship when you ask for the compliance with a rule that says shall. Again, it's systematic, and we are here -- and I don't know why -- either the U.S. Trustee was asleep at the switch or anybody else was asleep at the switch -- that this matter hadn't been brought to the Court's attention.

So the word "shall" is not strained in any fashion. It's not limited in any fashion. The word "shall" is absolute.

So, again, had -- was there some secret deal between the Trustee -- U.S. Trustee and the Debtor? I don't know. That may have been. But quite frankly, --

THE COURT: A secret deal?

MR. DRAPER: -- the Code, in 2015 --

THE COURT: Did you just use the term "a secret deal"?

MR. DRAPER: Well, some --

THE COURT: What --

MR. DRAPER: I'm not using the term. What I --

THE COURT: That's highly charged, that --

= MR. DRAPER: No, --

THE COURT: -- choice of words.

MR. DRAPER: What I mean, what I really mean is sometimes we go to the U.S. Trustee and say, look, can we have an extension? Can we have -- can we do this a little bit later? And the U.S. Trustee, in fairness to them, basically says, okay, you can do this or that. I don't know if that occurred in this case. But quite frankly, what we have are 20 months of noncompliance. And so I don't know if they said, look, --

THE COURT: Okay.

MR. DRAPER: -- you don't have to file it now.

THE COURT: So you meant an informal deal, not secret deal?

MR. DRAPER: Yes.

THE COURT: A secret deal, that sounds like something nefarious. Okay? So, --

MR. DRAPER: No, it is not intended in that -- it's --

THE COURT: Okay.

MR. DRAPER: Judge, it's not intended in that fashion.

THE COURT: Okay.

MR. DRAPER: This goes to my issue that it's systematic. It's a systematic compliance.

And let's also go the fact that the Bankruptcy Code requires complete and open disclosure. It does not matter who or why compliance is requested.

The next objection is I waited too long. And they offer an excuse, Judge, we're going to go effective. Let's look at what the Code requires -- the rule requires. It says it shall be filed, it has to be filed at certain points, through the effective date of a plan. It doesn't say after the effective date of a plan is filed or after the effective date of a -- of a plan occurs, your compliance is not required.

And I'll point out something where you ruled against me, and we've contrasted that in our motion -- in our opposition.

If you look at the examiner statute, which I know the Court has looked at and completely disagreed with my reading of it, it basically says after confirmation you don't have to do it. This statute doesn't say that. This statute says you have to file these through the effective date of a plan.

And so, you know, that "You waited too long" is really not a legitimate excuse.

The next issue is -- and --

THE COURT: Well, on that point, --

MR. DRAPER: And let's look at the cases.

THE COURT: On that point, can I just ask, what is the utility? I mean, let's say we're one -- okay. Let's say we're one month away from the effective date. Let's say we're three months away from the effective date. What is the utility at this point? There's a confirmed plan. Now, granted, it's on appeal. But, you know, what -- what would you --

MR. DRAPER: Well, --

THE COURT: What would you do with this information at this point? We have a confirmed plan.

MR. DRAPER: Well, there are two responses to that. First of all, the rule says you have to file it through the effective date of a plan. Somebody in rulemaking authority made that determination. And so it's not for you or I to question. That's the rule.

The second is the utility may be for further actions in the case that occur after the effective date. We just don't know.

And so the rule is designed to require things to be filed --

THE COURT: Wait. What did that last statement mean, --

MR. DRAPER: -- through the effective date.

THE COURT: -- for actions that might occur after the effective date?

MR. DRAPER: It may be --

THE COURT: What does that mean?

MR. DRAPER: After the effective date of a plan. There may be some -- some matter that comes up before the Court. And I'll give you the best example --

THE COURT: Well, --

MR. DRAPER: -- of all of them.

THE COURT: Okay.

MR. DRAPER: If you look -- if you look at the form, all right, and what I'd ask the Court to look at is -- I think it's Exhibit E that's required on the form. And what Exhibit E requires is disclosure of information where one of the subsidiaries has either paid or has decided -- has incurred a liability to somebody who would have an administrative expense against the Debtor.

The utility of that post-effective date is important, because post-effective date you'll be dealing with fee applications and other things. So the rule envisions disclosure --

THE COURT: Okay, I -- say that again for me slowly. How --

MR. DRAPER: Okay.

THE COURT: How could there be an administrative expense --

MR. DRAPER: If you'll --

THE COURT: -- claim against the estate in your scenario, again?

MR. DRAPER: Well, my scenario, if you look at Exhibit E that's required in the form, --

THE COURT: Do I have that, Nate?

MR. DRAPER: -- it basically requires a disclosure.

THE COURT: Okay. I don't know if I have it in my stack of paper. I --

MR. DRAPER: Well, let me read it to -- I can read it to you, Your Honor. It's easy. Let me pull it up.

Exhibit E, "Describe any payment by the controlled nondebtor entity of any claim, administrative expense, or professional fee that have been paid or could be asserted against the Debtor or the incurrence of any obligation to make such payments, together with the reason for the entity's

payment thereof or the incurrence of any obligation with respect thereof."

That is clearly a post-effective date issue that the Court should be concerned about, all parties should be concerned about, and so if that occurred, then everybody needs to know about it.

So E envisions something that is absolutely after the effective date that will be -- has a utility after the effective date.

Let's look at B. Again, something that may have something to do with after the effective date. That deals with tax-sharing agreements and tax-sharing attributes.

So -- and then C, which also has something to do with after the effective date and how things sort out through the liquidation, is described claims between controlled debtor, controlled nondebtor entity and any other controlled nondebtor entity.

So there needs to be a disclosure of due-to's and due-from's between the entities. This is -- this is not secret stuff. This is stuff that transcends the effective date of a plan.

And so when I focused on the rule, what I think the Court really needs to look at for the utility of this is exactly what the -- is required by a 2015.3 disclosure.

Does that answer the Court's question?

THE COURT: Yes.

MR. DRAPER: Now, my favorite excuse that's been offered is really what I'll call the secret sauce dispute -- excuse, or the former lawyers for the Debtor. Again, let's break this down and let's look at the form.

What the form requires is there's nothing the Debtor's former lawyers did or who were working for Mr. Dondero. If you look at Exhibit A that's required, is contains the most readily-available balance sheet. That's not a legal issue. Statement of income or loss. That's -- that's just an accounting concept. Statement of cash flows. That's also an accounting concept. And statement of changes in shareholders or partners equity for the period covered by the entire report.

B again has nothing to do with the lawyers, is describe the controlled nondebtor business entity's business operations.

So the information that's here is purely accounting information and it is not secret.

Let's, again, let's focus on A, which -- which I think just deals with financial information. The first one is balance sheet. All right. They've argued that this tells what the value -- what we think the value of an asset is. That's not true. A balance sheet may have a fair market value. A balance sheet may have a book value. I don't know

what they have here. But quite frankly, if you or I sell my house, our house, we go to our agent and we say, hey, look, agent, you know, this is my listing price. That's my opinion as to value. It may not be somebody else's opinion as to value. And quite frankly, when somebody asks or wants to buy an asset, what they come to, don't they ask, hey, what do you want for it?

You know, book value does not equal value. And I know the Court has held -- has had before it many clients or many debtors, and I've represented a lot of debtors, who think a Bic pen that they have is not worth ten cents but is worth a gazillion dollars.

So that issue doesn't go to any secret information. The statement of income doesn't go to secret information. Statement of cash flows does not. And changes in shareholders does not. There's no secret information. The only person who this may be kept away from, possibly, and that -- that, I don't think applies, is a competitor who may want to look at these. And a court can fashion that relief and say, okay, let's put this under seal. If somebody signs a confidentiality agreement, they can have access to this.

But this is purely accounting information. It's nothing more.

And the reference to trade secrets that the Debtor attempts to make is just not true. This is not a trade

secret. There's no confidential research or development or commercial information that's being disclosed. And 9018 that they cite is truly an evidentiary rule. We're not -- this -- this requirement does not go to customers. It does not go to pricing. It does not go to business processes. It just goes to financial information.

So the global argument that they're making is undercut significantly by the -- by what is required under the rule. I'm just asking for mere compliance with the rule, nothing more.

And so, you know, what -- I still don't understand what the issue is, why it hadn't been done. And quite frankly, again, this is systematic. It has nothing to do with who is requesting it, what is requesting it. It should have been done. It should have been done probably by the U.S. Trustee. You know, somebody -- you know, and quite frankly, I've been in this case since December. It was raised in February. You know, I don't understand why, from February to the time I filed this motion, they didn't come in and either (a) file the reports, which on their face appear to be benign; or (b) ask for some reason other than, oops, I forgot.

And so I'd ask the Court to require compliance. I don't think the information here falls into any category of for cause. They can do it. This -- and the cases -- any case they cite does not support their proposition that it shouldn't

be done.

Does the Court have any questions for me?

THE COURT: Well, I do. My brain just constantly goes to standing. And remind me again, the trusts you represent have each filed proofs of claim, correct?

MR. DRAPER: Yes. And they're objected to, --

THE COURT: They are objected to.

MR. DRAPER: -- just so the Court's aware.

THE COURT: Okay. Remind me again what the substance of the claim is about.

MR. DRAPER: The substance of the claim is I have a -- I have a $17 million debt owed to me by Highland Select. And it is our position that this Debtor is also liable for the Highland Select debts through its general partner status, through its comingling of things, and how these assets fit together, between Highland Select, which is a hundred percent owned by the -- ultimately owned by this Debtor. So I'd -- again, the standing issue --

THE COURT: And the debt is --

MR. DRAPER: And I am also an equity holder.

THE COURT: And the debt is pursuant to a note?

MR. DRAPER: It's pursuant to a loan agreement between my client and Highland Select.

THE COURT: All right. And was an administrative expense filed by your client?

MR. DRAPER: Not by my client. No. And I'm also an equity holder in the Debtor that, when the plan goes effective, I ultimately have, at best, a residual interest when the Star Trek Enterprise returns.

THE COURT: Okay. And what is that residual interest? Remind me again. Isn't it less than one percent --

MR. DRAPER: After the --

THE COURT: -- of a subordinated --

MR. DRAPER: After all the class --

THE COURT: Go ahead.

MR. DRAPER: Right. Well, after all the classes are paid in full plus a hundred cents on the dollar -- get a hundred cents on the dollar plus some interest factor, and the -- there's another party who has an equity interest that's ahead of me get paid, I get some -- some money.

Again, I have a residual interest. It's very tangential. And I'll be very frank to the Court and honest, I think ultimately I will receive nothing under that residual interest.

However, my -- the standing is not really an issue here. Honestly, this is a systematic issue. I've tried to make that clear for the Court. It's something that should be employed, and who is asking for it is irrelevant. The Code requires -- the Rules require it. There is no excuse that they've given that should absolve them of that. And whatever excuse they've

given basically falls in -- falls in the face of what the rule -- the official form requires.

I'm not asking for a variance of the official form. I'm asking that this Court not allow a "Oops, I forgot" or "It slipped through the cracks" excuse.

THE COURT: All right. And who is the current trustee of these trusts now?

MR. DRAPER: My trusts? Nancy Dondero is the trustee of the Dugaboy Trust, and I think Grant Scott is the trustee of the Get Good Trust.

THE COURT: Okay. I'm asking because we heard earlier this week that Grant Scott has resigned from certain roles.

All right. Mr. Pomerantz, do you have evidence, --

MR. POMERANTZ: Yes, Your Honor.

THE COURT: -- or argument only?

MR. POMERANTZ: Argument only, Your Honor.

THE COURT: Okay.

MR. POMERANTZ: As with -- as with many of the other motions that have been filed with this -- in this case and has burdened the Court's docket over the last several months, I really can't help to wonder why we are here.

Eighteen months after the case was filed, after plan confirmation, and with the effective date that's set to occur soon, Dugaboy and Get Good, the family trusts, ask the Court

to compel the Debtor's compliance with 2015.3. It reminds me of the motion that Mr. Draper mentioned that he filed on the eve of confirmation, the eve of confirmation, fourteen months after the case had been filed, seeking an examiner. And the Court denied that motion without a hearing.

Now they're back again with, as Your Honor mentioned and I'll get to in a little bit, with the same tangential connection to the bankruptcy case and the same tenuous standing that the Court has alluded to on several occasions, including just a couple minutes ago.

It's clear that the motion, which is not supported by any other creditor in the case and is actually opposed by the Official Unsecured Creditors' Committee, is not about financial transparency, as Mr. Draper would like Your Honor to believe, but it's filed as a further litigation tactic to gain access to information that Mr. Dondero would not be able to obtain through discovery, who has tried to obtain through other means, and that the Debtor believes will be used for improper purposes.

One of the Movants, Dugaboy, is actually the holder of two claims against the Debtor. I guess Mr. Draper forgot about his administrative claim, which really goes to the validity of it. One is the claim against the Select Fund, a subsidiary of the Debtor, for which Mr. Draper says they should be liable, including under an alter ego theory.

Yes, Your Honor heard me right. Dugaboy is saying that the Debtor is an alter ego with a nondebtor entity. One would think that, given the recent disclosures and commencement of litigation -- and I'm talking about the UBS litigation -- that Mr. Dondero would be the last one to raise alter ego. In any event, that claim is disputed.

The second claim is an administrative claim that Mr. Draper filed on account of their 1.71 percent interest in Multistrat, saying they were damaged by decisions Mr. Seery made by selling certain life insurance policies in the spring of 2020.

There is a theme here, Your Honor: Claims that Mr. Seery made decisions that harmed -- in this case -- Dugaboy's 1.71 percent interest.

The claim has no merit. The Debtor will contest it. But even if it was allowed, the claim would be paid a hundred cents on the dollar under the plan. And accordingly, the information under 2015.3 is not relevant.

Get Good filed a claim which alleges they may have a claim from its limited partnership interest in the Debtor. But for the record, Get Good is not a limited partner of the Debtor.

So, how did we get here, Your Honor? The Dondero entities sandbagged the Debtor by raising the issue for the first time during the confirmation trial. Not in their briefs, not in communications to the Debtor in advance of the confirmation,

but while the Debtor had its witness on the stand.

And why did they do it that way? Because they wanted to be able to argue, and they did argue to Your Honor, that the Court couldn't confirm the plan because the Debtor did not comply with Rule 2015.3, was in violation of 1129(a)(2), and the Court could not confirm the plan.

Of course, the Court rejected that argument. And when the Debtor entity -- when the Dondero entities raised it as a reason for Your Honor to enter a stay pending appeal, Your Honor commented that that claim bordered on frivolous. And of course, that issue has been raised to the Fifth Circuit as one of the reasons to overturn Your Honor's confirmation order.

And why are the Dondero entities persisting now in their effort to obtain disclosure? It's because they're desperate to obtain financial information about the Debtor because they want to become involved in the Debtor's future asset dispositions at the nondebtor affiliates and they want to get information.

As Your Honor will recall, Mr. Dondero filed a motion in January asking for this Court to require the Debtor to bring affiliated -- affiliated entity asset sales to the Court. The Debtor opposed the motion, and before the hearing it was withdrawn.

Your Honor has heard testimony from Mr. Seery throughout the case that Mr. Dondero previously interfered with the

Debtor's asset sales and that -- and on that basis, the Debtor was not comfortable including Mr. Dondero in sale processes. And I'm not talking about the AVYA and the SKY stock from the CLO funds, but rather certain transactions regarding SSP and OmniMax which were subject to a motion made by, I believe, the Funds or the Advisors -- I get them confused sometimes -- accusing the Debtor of mismanaging the CLOs. And if Your Honor recalls, Your Honor denied that motion based upon a directed verdict.

So, having been rebuffed by the Debtor in its attempts to obtain financial information that they're not entitled to, the trusts have one last effort. Press 2015.3 arguments, because, of course, they're very interested in the integrity of the process, in the institution, in the following of the Bankruptcy Code. That is exactly what their motivation is.

But there's yet another reason, Your Honor, the Debtor believes Mr. Dondero, through the trusts, is pursuing this motion. As Your Honor is aware, the Debtor recently discovered some extremely troubling information regarding a massive fraud involving a previous --

(Audio cuts out.)

THE COURT: Uh-oh.

THE CLERK: He froze up.

(Pause.)

THE COURT: All right. Mr. Pomerantz, you're frozen.

Is everybody frozen, or is it just him?

MR. POMERANTZ: There'll be some judicial estoppel.

THE COURT: Okay. Mr. Pomerantz?

MR. POMERANTZ: Yes.

THE COURT: You were frozen for about one minute. So I am sorry, --

MR. POMERANTZ: Uh-huh.

THE COURT: -- you're going to need to repeat the past minute for me.

MR. POMERANTZ: Just to check if you were listening, Your Honor, what was the last thing you remember me saying?

THE COURT: I was listening.

MR. POMERANTZ: Okay. So I will -- did you hear me talk about Mr. Seery's testimony throughout the case?

THE COURT: No. No.

MR. POMERANTZ: Okay. I'll go back a paragraph before. Okay. Okay.

And why are the Debtor -- why are the Dondero entities persisting now in their effort to obtain disclosure? It's because the Dondero entities are desperate to try to obtain financial information, information they would not otherwise be entitled to under discovery rules, because they want to become involved, he wants to become involved in the Debtor's asset dispositions in the future regarding affiliated nondebtor entities.

If Your Honor will recall, Mr. Dondero made a motion in January seeking an order from this Court requiring the Debtor to bring to this Court asset sales from nondebtor affiliates. The Debtor opposed the motion, and before the hearing on the motion it was withdrawn.

Your Honor has heard testimony from Mr. Seery throughout the case that Mr. Dondero previously interfered or tried to interfere with the Debtor's asset sales, and on that basis the Debtor was not comfortable inviting Mr. Dondero into its asset sale processes.

And I'm not talking about the AVYA and SKY stock from the CLOs, but rather certain transactions regarding SSP and OmniMax, which were closed for fair value, which were subject of a motion that the Advisors or the Funds -- and I often get them confused -- that they made, accusing the Debtor of mismanaging the CLOs. And I'm sure Your Honor recalls. Your Honor denied that motion on a directed verdict basis.

So, having been rebuffed in their attempts to try to get the information that they weren't entitled to, they're now proceeding under 2015.3. And, of course, Mr. Draper say he is a protector of the process, the integrity of the system demands it. It has nothing to do with Mr. Dondero's interests, of course, because Mr. Draper is just there to make sure everything runs on time and everything is done according to the law, notwithstanding the fact that the U.S. Trustee

hasn't brought this motion, notwithstanding the fact that the Unsecured Creditors' [Committee] supports our position, and notwithstanding the fact that not one creditor, not one unaffiliated creditor, has asked this Court for that information and relief.

There's yet another reason, Your Honor, the Debtor believes that the trusts are pursuing this motion. As Your Honor is aware, the Debtor recently discovered some extremely troubling information regarding a massive fraud involving a previously-unknown entity called Sentinel Reinsurance. And that information is the subject of an adversary proceeding filed by UBS, which Your Honor heard substantial information about both in connection with hearings on that motion practice and also at the UBS 9019 motion.

The Debtor believes that the 2015.3 motion is a veiled or pretty transparent effort of Dondero trying to find out what the Debtor knows and what the Debtor doesn't know and trying to get the Debtor to go on record with information that later in litigation they will use as a judicial estoppel.

Your Honor, that's not an appropriate predicate for the motion. Mr. Draper will deny that that's the reason, of course, but I leave it for Your Honor to look at the circumstances and make your own conclusions.

As the Court has mentioned many times, context matters, and the Court should take this context into account in looking

at the motion and the requested relief.

In our opposition, we argue that the Court should either waive the 2015.3 compliance, given the anticipated effective date, or continue the hearing to September 1 for a further status conference if the effective date doesn't occur.

The burden on the estate if it was required to comply with 2015.3 is significant, and this goes to the issue Your Honor mentioned, that, really, what's the point at this stage of the case? There are more than 150 entities that arguably meet the definition of substantial or controlling interest for which the Debtor would be required to file reports under 2015.3. As the Court knows, the Debtor is down to 12 staff, 13 if you include Mr. Seery. And if those employees working with the Debtor's financial advisors were required to devote the necessary time and effort to prepare the reports, the time and the cost it would take would be substantial. The Debtor just doesn't have the bandwidth to comply.

More importantly, Your Honor, as we mention in our opposition, Mr. Seery and the board are extremely concerned with the quality of information it has received from the Debtor's employees who have since been terminated by the Debtor and now most of them are working for Mr. Dondero and his related entities in one form or another. It's not just the lawyers, as Mr. Draper says. It's the financial advisors, who, in other contexts, and you'll hear a little later, are

coming up with new information, new defenses on notes, et cetera. The Debtor has no confidence that the information in its records is accurate from a financial perspective or from a legal perspective.

As I mentioned, the Court is aware of the Sentinel cover-up. And uncovering just the facts regarding Sentinel was a very difficult process and required the Debtor to essentially conduct discovery against itself. It just couldn't rely on its information. So conducting the diligence that would be required to provide accurate information for 150 entities, intercompany claims, administrative claims, back and forth, due-to's, due-from's, tax issues, all the stuff required by the forms would be an extremely arduous task. It would take millions of dollars of forensic accounting. And it wouldn't -- and for what purpose? There is no purpose.

In addition, Your Honor, to waiving filing the reports, 2015.3 also allows the Court to modify the reports requirement for cause when the debtor is not able, in making a good faith effort, to comply with the requirements. Your Honor, in this case, cause is clearly established under 2015.3.

Dugaboy spends a lot of time in their reply attacking the cases that the Debtor cites in its opposition. While the facts in those cases are different from the case here, they all share something in common which is the key point: All of the cases involve a waiver of the 2015.3 requirement for plans

that will be confirmed or will soon become effective.

Mr. Draper doesn't contest that this Court has the power to waive. He says, well, those requests were made in the first 30 days of the case or in the initial part of the case. But they all granted relief where the effective date -- where either the confirmation date occurred and they were waiting for the effective date, or the confirmation case was -- was pending.

And Your Honor, we would ask the Court to treat the Debtor's opposition as a motion to waive the requirement under 2015.3. We could file a separate motion after this hearing. It would be a waste of time. But we would ask Your Honor, treat our opposition as a motion.

Dugaboy spends the rest of its time, in the papers and its argument that Mr. Draper made, challenging several arguments, other arguments the Debtor makes in its opposition. First, they argue that there is no deadline for seeking compliance and that the insinuation that we made that this is gamesmanship is off base. I'll acknowledge, Your Honor, 2015.3 does not contain a deadline for a party seeking compliance. But as I said before, context matters. And given how this motion has come to be before your court, I will leave it for Your Honor to determine which party is the true one playing games here.

Second, Dugaboy argues that there's nothing confidential

in any of the information required to be filed in the 2015.3 reports and that the disclosure of information will facilitate interest in the assets and maximization of the Debtor's assets. Twenty months into this case, Your Honor, no party other than Mr. Dondero or his related entities has complained to the Court that the Debtor is not being transparent or forthcoming.

And there's good reason for that. Even during the early stages of this case, when the Debtor and the Committee had their differences, the Debtor was entirely forthcoming with information about its assets, nondebtor affiliates, and strategy for maximizing assets of the Debtor and its affiliated entities. That collaborative effort continues today, and I suspect is one of the reasons that the Committee has joined in the Debtor's opposition here.

Similarly, the Debtor's nondebtor affiliates have transacted business with third parties postpetition. The Debtor has provided information to those parties as appropriate, subject to nondisclosure agreement, and several successful processes have been run that have maximized value.

And just to make clear, Your Honor, we do not believe that Mr. Dondero or his related entities signed a nondisclosure agreement that they would comply with the obligations. So we have no interest and no desire, unless ordered by the Court, either in this context or another context, to provide Mr.

Dondero or his related entities with information that the Debtor believes would prejudice its ability to monetize assets.

The alleged transparency that Mr. Draper and the trusts seek is not borne out of a desire to open the playing field and make it level and put financial information in the public domain for the good of the case. It's about getting access to information that the Debtor, in the exercise of its business judgment -- should not be disclosed.

Lastly, Mr. Draper again, during oral argument, harped on Mr. Seery's testimony that the reason the reports were not filed is that they fell through the cracks. It's misleading. He also stated that Mr. Seery said they would file the reports. I've looked at the testimony. That's not what he said. But he did say at confirmation that it slipped through the cracks. No doubt. That's in the transcript.

And yes, the Debtor stands behind the fact that, in the months leading to the confirmation hearing, neither Mr. Seery nor the Debtor's professionals even thought about 2015.3.

But Your Honor, it's what has happened since that justifies the Debtor's request for a waiver. The plan is soon to become effective. As I said, the Debtor is down to 12 employees, who could not possibly prepare this information without substantial time and effort. Their effort and their time should be focused on monetizing assets that will put

money in creditors' pockets, hopefully sooner than later.

And on top of that, given the massive fraud that management has uncovered, and continues to uncover information to this day, Your Honor, on matters separate from the Sentinel matter -- every week, we are finding out new information that has not been made public that causes us real concern, and at the appropriate time that information will be brought before the Court -- the Debtors simply can't rely on that information. And to be required to go through the effort to put that information out in the public record so Mr. Dondero can later say that the Debtor was judicially estopped, or use that information for an ulterior purpose or a litigation strategy, just does not make sense.

Based upon the foregoing, Your Honor, we would ask that the Court deny the motion and grant the Debtor a waiver of the 2015.3 requirements.

Does Your Honor have any questions?

THE COURT: I do not think so. Well, I just -- am I correct in remembering the Debtor had somewhere around 75 employees at the beginning of this case? And I didn't know it was down to 12. I knew it was down very low. But that's what we're talking about?

MR. POMERANTZ: Yeah, that -- that sounds about right, Your Honor.

THE COURT: Okay.

MR. POMERANTZ: And I should mention, you know, I was there at the beginning. I was there before the board. The first couple months of the case, it was extremely difficult to get the Debtor's employees focused on trying to get the information for the 2015.3. They did not want that information disclosed. And it's sort of a -- sort of a little ironic that now they're here asking for disclosure.

But, look, we're not going to walk away from the fact that, yeah, it slipped through the cracks. After the board took over, Your Honor has heard many times what they did, the efforts they went to. If the U.S. Trustee had approached us, if Mr. Dondero had approached us early on, we would have figured out a way to address that and deal with that. The fact of the matter, it wasn't. The fact of the matter, it was brought up as a litigation tactic on confirmation, to defeat confirmation of the plan. And as I mentioned, for the reasons, it's being used as a tactic now as well.

THE COURT: All right. Thank you.

MR. DRAPER: Your Honor, I -- can I -- can I make a few comments?

THE COURT: No, not --

MR. DRAPER: I'll be short.

THE COURT: Not yet. Mr. Clemente, --

MR. DRAPER: Okay.

THE COURT: -- I neglected to mention when I was

taking appearances, you filed a joinder on behalf of the Committee with regard to --

MR. CLEMENTE: That's correct, Your Honor.

THE COURT: So I need to hear from you next, and then I'll circle back to Mr. Draper.

MR. CLEMENTE: That's correct, Your Honor. And just for the record, Matt Clemente from Sidley Austin.

THE COURT: I should say, a joinder in the opposition. That was a confusing statement I just made.

MR. CLEMENTE: Yeah, that's correct, Your Honor.

THE COURT: Uh-huh.

MR. CLEMENTE: And so I will be very brief, because Mr. Pomerantz was obviously very thorough. But just to echo what he said, you know, the Committee is comfortable with the information that it has received. And as Your Honor knows, we haven't been and won't be shy about coming to the Court if we felt that that was not the case.

You know, we obviously had our issues early on in the case, including with respect to getting information from the Debtor. But, again, the Committee, you know, has been comfortable with the information that it's received from the Debtor.

Therefore, at this point, Your Honor, from the Committee's perspective, there doesn't seem to be any bona fide purpose to making the Debtor go through the cost and the expensive effort

that Mr. Pomerantz said would be required to create the Rule 2015.3 reports. And, again, I -- without casting aspersions, it would suggest, based on previous activity, that there's really only a nefarious purpose for what is being pressed before Your Honor today.

So, Your Honor, again, we support the Debtor's position. I absolutely agree with Mr. Pomerantz's arguments. We would request that Your Honor, you know, enter the relief that the Debtor is requesting today.

THE COURT: All right. And Mr. Clemente, I just --

MR. CLEMENTE: Yes?

THE COURT: I just want to seal in my brain the context that I think applies here. The January 2020 corporate governance settlement order. In there, we all know there were lots of protocols about lots of things, but one of them or a set of the protocols dealt with transfers of assets in these nondebtor subs or entities controlled by the Debtor. And, of course, Mr. Pomerantz alluded to this, but I'm just going to make sure I'm crystal clear on what I remember. You know, the whole -- well, it was a protocol that the Committee would have to be consulted on transfers of assets of those nondebtor subs, those nondebtor controlled entities, and, you know, there was a discussion that 363 doesn't apply, of course, to nondebtor assets, and you could really argue all day, even if it did apply, about whether these are ordinary course or non-

ordinary course because of the business Highland is in. But the Debtor negotiated with you and your clients: We're going to have full transparency to let you all get notice of transfers of assets of these subs, and you could even object and bring a motion. I mean, you can file some sort of pleading, even though we were not so sure 363 under any stretch might apply.

Am I correctly restating the context that -- you know, Mr. Pomerantz alluded to it, but I just want to make sure I'm clear and the record is clear.

MR. CLEMENTE: Your Honor, you are -- you are absolutely correct. There's a very complex set of protocols that we painstakingly negotiated with the Debtor that had different categories depending upon the asset --

THE COURT: Uh-huh.

MR. CLEMENTE: -- and the Debtor's ownership and its relationship with respect to the nondebtor entities or the related parties. That required the Debtor to come to the Committee in certain sets of circumstances and explain a potential transaction and get the input from the Committee, and either the Committee could consent to the transaction, or if the Committee did not consent to the transaction, the Debtor could seek relief from the Court.

Your Honor will remember that, in fact, one of the hearings we had with respect to the monies that were placed in

the Court registry arose out of the protocols. So the protocols worked from that perspective in requiring the Debtor to come to the Committee, allow the Committee to make an evaluation, and then the Debtor would make a decision from the perspective of how it wished to proceed.

So, Your Honor is absolutely correct. That was all part of the governance settlement that was negotiated back in January. And from the Committee's perspective, again, it hasn't always been lemon water and rose petals, but we believe that those protocols worked, and worked to provide the Committee with information so it could appropriately evaluate what the Debtor was doing.

THE COURT: All right. So I'm correct, you would say, in thinking there was a lot of transparency built in? It didn't always work smoothly in the beginning, and as we know, there were document production requests, many of them from the Committee. That all came to a head last July, with more protocols put in place. But lots of transparency was negotiated by the Committee with regard to all of these controlled entities and subs?

MR. CLEMENTE: That was a critical, Your Honor, that was a critical component of the governance settlement.

THE COURT: Okay.

MR. CLEMENTE: Because that was obviously the impetus for us wanting that governance settlement, so we could get

that transparency.

So, to answer your question, Your Honor, yes, the protocols served that function of providing the Committee with information on transactions that the Debtor was proposing to enter into.

THE COURT: Okay. And of course, there was a waiver of the privilege -- I don't know if that's the word; I guess that is the right word -- with regard to possible estate causes of action. Maybe I'm getting into something unrelated. Maybe I'm not. But that was part of the protocol, too, right, the Debtor would waive its --

MR. CLEMENTE: That's correct, Your Honor.

THE COURT: -- privilege with regard to --

MR. MORRIS: Your Honor, I apologize for interrupting. This is John Morris from Pachulski Stang. I just want to recharacterize that a bit.

THE COURT: Okay.

MR. MORRIS: It's not a waiver of the privilege. We agreed to share the privilege --

THE COURT: Share the privilege. Okay.

MR. MORRIS: -- with the Debtor. The Debtor --

MR. CLEMENTE: I --

MR. MORRIS: I'm sorry to -- sorry to correct you, but it's a --

THE COURT: Well, no, --

MR. MORRIS: -- very important point.

THE COURT: -- that's why I hesitated on that word. I wasn't sure if that was the word, the concept.

MR. MORRIS: There's no waiver.

THE COURT: Okay. Okay. I'm not always --

MR. CLEMENTE: That is -- and that is correct, Your Honor.

THE COURT: Okay.

MR. CLEMENTE: Mr. Morris is correct. As are you.

THE COURT: Okay. So I'm asking you, is all of this protocol that was in place, I mean, is it reasonable for me to think maybe that's the reason you all never pressed the 2015.3 issue, because you were getting a full look, as best you could tell, and more? You were getting more information, perhaps, than these reports would have provided, even. Is that fair for me to think?

MR. CLEMENTE: It is fair for you to think that, Your Honor. We viewed the protocols as our mechanism to get the information that was necessary for the Committee to evaluate the transactions that the Debtor wanted to engage in. And so we were looking to the protocols, and in fact, I think the protocols were very broad in certain respects, and we were not thinking about the Rule 2015 reports, nor would we have said that that would have been a substitute for negotiating those protocols and implementing them.

THE COURT: Uh-huh.

MR. CLEMENTE: So that's how the Committee was looking at it, Your Honor.

THE COURT: Okay. All right. Well, okay. Mr. Draper, I'm going to come back to you. You get the last word on that.

MR. DRAPER: Thank you. First of all, the answer is yes, there are extensive protocols between the Debtor and the Committee. I one hundred percent agree with you. And the other point I'd make with that is this information is a scaled-down version of what they're giving the Committee on a regular basis. So the argument that it would take hundreds of man hours and millions of dollars to do that is absolutely not true. This information, in large measure, even vaster portions of it have already been given to the Committee. Number one.

Number two, we as lawyers are literalists --

THE COURT: But I presume not in this format. I presume not in the format of filling out the form A through E exhibits. I mean, maybe it's an email.

MR. DRAPER: Well, --

THE COURT: Maybe it's a phone call.

MR. DRAPER: -- it's not in a form -- no, there is -- there is -- they both have financial advisors who I'm sure you're going to see whopping fee applications from who have

pored through all of this. My bet, and I'd bet big dollars on this, is that financial -- balance sheets are given to them on a regular basis, statements of financial information for subsidiaries and changes in cash flow are given to them. Otherwise, there's no way the Creditors' Committee could monitor what's going on and what's happening.

So, really, this is -- this is not a phone call thing. There is real financial data that's being given that is available and can be given on a scaled-down basis.

My real point of this is we as lawyers are literalists until it suits our purposes not to be literalists. There is no exception in 2015.3 for information being given to a creditors' committee. In fact, when you look at 2015.3, it basically figures there is information going to a creditors' committee. This is for the others who don't have access to that information.

And the interesting part of that is, as the Court's aware, the Bankruptcy Code was amended that if I had gone to the Creditors' Committee and made a request as a creditor, I probably have a right to get even more information than 2015.3 allows me to get.

Next, which is the giant smokescreen. We're basically dealing now with the gee, Mr. Dondero's a bad guy; gee, they want this information because they want to uncover what we know. That's just not true with respect to these reports. If

you look at what the reports do, the reports start from the day that the case was filed and ask for changes in financial condition from the day the case was filed going forward. It is all postpetition in its effect. And to the extent they've uncovered things that are incorrect in the Debtor's schedules, the truth is the amendment of the schedules is warranted. 2015.3 does not deal with prepetition activity in any way, shape, or form. They are balance sheets that ask for -- or changes in financial condition that go from the filing of the case, or seven days before, and require reports every six months.

So this giant smokescreen that there's a massive fraud, there's all this other stuff that's been uncovered, is just not true. It is an attempt to cover up or give an excuse that is unwarranted with respect to why they haven't done the 2015.3.

Next point. There is no secret stuff that's being done. There's no valuation that we're asking for. 2015.3 asks for balance sheet information. So, in fact, if they own ten pieces of property, 2015.3 would bind them together in a balance sheet and say, this is the total real estate that we have. If an entity has 15 entities under its umbrella, it would have a balance sheet entry. Assets and liabilities. It's not broken down. The assets are probably at book value or some sort of mark to market.

But honestly, this is -- there is no way that this information gives anybody any benefit in terms of any bidding.

And the other point that's problematic is anybody who wants to buy these assets would walk in and say, look, I want a data room, let me look at this. If what Mr. Pomerantz is saying, which I don't understand, is that we're not going to let a Dondero entity buy an asset, notwithstanding the fact that they may pay more for the asset than somebody else would, I think that's -- I have a huge problem with that. We're here for monetization of assets. We're here to maximize the value. And if, in fact, somebody walks in that may be a tangentially-related Dondero entity and is willing to pay more, they should be thrilled with that fact, not jettison it or disregard it. That is -- their job is to maximize value, not minimize value through a controlled sale process.

Again, I'm looking at the Code section. I'm looking at 2015.3. It basically says what it says. It's designed to give basic financial information. It has nothing to do and offers no disclosures of anything Mr. Pomerantz has thrown up before the Court or that Mr. Dondero or any of his entities or people are alleged to have done.

And the last is, if in fact there's financial information that's incorrect in any of these entities, I question what the Debtor's financial advisors have been doing for the last months. Honestly, they should be poring over these books. If

they find a problem, they should correct 'em and address them. And so there's no basis under the Code. We've -- what's been given to you and what their argument is is an excuse for not doing something they should have done. It can't be couched as to who's asking. It is systematic in nature. And what's been thrown up before the Court in Mr. Pomerantz's arguments are just not true when you look at what the form requires.

THE COURT: You know, I can't remember ever being in a contested matter involving this rule. And I was kind of pondering before coming out here, I wonder why that is. And, you know, I'm thinking the vast majority of our complex Chapter 11s that involve many, many, many entities, they all file. Okay? You know, they're kind of a different animal, if you will, from Highland.

You know, we know how it normally works. You've got maybe the mothership, holding company, and many, many subs, and you've got asset-based lending, right, where, you know, maybe the majority of the entities in the big corporate complex are liable, so you just put them all in. Okay?

We don't have -- I have not experienced a lot of Chapter 11s where you have basically just the mothership and then you keep subs and lots of affiliates out. Okay? So I'm thinking that's one reason.

Another thing, I can't remember how old this rule is. Does anyone -- can anyone educate me? How long has this rule

been around?

MR. DRAPER: Your Honor, this is Douglas. I think it came in after Lehman Brothers. And it came --

THE COURT: Uh-huh.

MR. DRAPER: It was put in to deal with off-balance sheet items.

THE COURT: Uh-huh.

MR. POMERANTZ: 2008, Your Honor.

THE COURT: 2008?

MR. DRAPER: Which is exactly right. It --

THE COURT: Okay.

MR. DRAPER: Yep.

THE COURT: Okay. So that, that's another reason. Because I was thinking like *Enron* days. You know, that's a big giant, a gazillion entities, and, of course, a whole huge slew of them were all put in.

So, there's not a lot of case law. And you know, maybe there are other situations where a judge ruled on this issue but without issuing an opinion. So, anyway, that's neither here nor there.

Mr. Draper, you've urged me to focus on the literal wording of the rule. It's "shall" language. You've talked about essentially the integrity of the system as being the reason for the rule. You've told me not to accept the Debtor's "bad guy" defense, you know, as an excuse. This is

just Dondero, you know, wanting the information, and therefore I should discount the motivations here.

But let me tell you something that is nagging very, very much at me, and I'll hear whatever response you want to give to this. I just had an all-day hearing a couple of days ago, and this involved the Charitable DAF entities and a contempt motion the Debtor filed because those entities went into the U.S. District Court upstairs in April and filed a lawsuit that was all about Mr. Seery's alleged mismanagement with regard to HarbourVest.

So what I'm really worried about is the idea that your client wants this information to cobble together a new adversary alleging mismanagement. How can I not be worried about that?

MR. DRAPER: It's real simple. Because the information that's here doesn't go to management decisions. The information that's requested here has balance sheet items. It has to do with changes in cash flow. It is not something that you can cobble together a claim, because it doesn't deal with discrete transactions. It deals with only transactions between affiliated entities. It only deals with disclosure of administrative expenses that are incurred by a subsidiary for which the Debtor is liable. It only deals with changes in condition on a go-forward basis and a balance sheet. It doesn't say, gee, we have to disclose that, with respect to

HarbourVest or with respect to the MGM stock or whatever, we're doing A, B, or C. It doesn't go there.

That's why I asked the Court in my opening, look at the form. Because the form is what I'm asking for adherence to. I'm not asking the form to be varied. I'm just asking the form to be approved -- to be addressed. And the form controls. It is not something you can cobble together a complaint with.

THE COURT: Well, you left out when I asked, you know, did your client have an administrative expense claim in this case, and Mr. Pomerantz corrected the record on that. Your client, while it's not a lawsuit in another court, has filed an administrative expense that there was mismanagement of a nondebtor sub or nondebtor controlled entity, --

MR. DRAPER: That -- that's --

THE COURT: -- Multistrat.

MR. DRAPER: No, that's not -- if -- if I understand the claim -- again, I didn't file it, and I forgot, that's an oops on me as opposed to an oops on Mr. Seery for not filing, and I apologize for the Court for that. But if I understand that claim, is when he acquired whatever he acquired, he should have offered it to the other -- to the other members of the -- that group. Again, I'm not -- that's not -- I'm a bankruptcy lawyer, as the Court's well aware. This other stuff is beyond me.

But the truth is, my understanding of the claim, it goes to who should have benefited by the transaction and whether the Debtor got CLO interests or got cash for it is irrelevant and that it should have been offered. That's what I understand the claim.

THE COURT: Okay. So the same sort of theory --

MR. DRAPER: So, the claim --

THE COURT: -- as HarbourVest? The same sort of theory as HarbourVest?

MR. DRAPER: No. No. Well, no, I'm just saying, that's -- that's what -- again, you're asking me for something that's outside my expertise.

THE COURT: Okay.

MR. DRAPER: Yes, we may have filed a claim.

THE COURT: Who filed a proof of claim?

MR. DRAPER: And the point I'm making --

THE COURT: Who filed the proof of claim?

MR. DRAPER: What? I did not -- I have not filed the proof of claims that were asserted by Dugaboy.

THE COURT: I mean, --

MR. DRAPER: I think that was --

THE COURT: -- request for administrative expense. Who filed this? You say you don't -- you didn't file it.

MR. DRAPER: I did -- I don't think I did.

MR. POMERANTZ: Your Honor, to clarify, it was filed

as a proof of claim, but it related to postpetition actions. And, again, I don't have it before me. This has been raised --

MR. DRAPER: I --

MR. POMERANTZ: -- several times in the confirmation hearing when Mr. Draper was there, so I guess he must have just forgotten about it. But I don't know who actually filed it. But it is -- it is -- it is a proof of claim that is on the record.

MR. DRAPER: Mr. Pomerantz, God forbid that I should forget something. I'm sure you never have.

THE COURT: Okay. Well, here's what I'm going to do. I'm not going to grant the relief being sought today, but I will continue the hearing to a date in early September. And Mr. Draper, you can coordinate with my courtroom deputy, Traci Ellison, with regard to a setting in early September.

I can assure you it's not going to be until after Labor Day. I think Labor Day falls on the 6th, maybe, and I plan to be far away the first few days of September, far away from this country.

But here are a few things I want to say. First, I care about transparency, and I tend to strictly construe a rule like this. I think, you know, it should be very clear for anyone who's appeared before me that I really like -- I say open kimono. I probably shouldn't use that expression, but I

use that expression a lot. You know, when you're in Chapter 11, the world changes and you have to be very transparent.

But while I generally feel that way, we have -- as I also always say, facts matter, contexts matter -- and here we are twenty months into a case and we're post-confirmation. This motion was filed post-confirmation. So I acknowledge that the Rule 2015.3(b) has the requirement of filing reports as to these nondebtor controlled entities until the effective date of a plan. We're so -- we're presumably so very close to the effective date that I think I should exercise my discretion under Subsection (d) of this rule to, after notice and a hearing, vary the reporting requirements for cause. I think there's cause, and that cause is I think we're oh so close to the effective date. That's number one. Number two, we're down to 12 staff members. And I've heard that 150 entities may be implicated, and I don't think that is a necessary and reasonable use of staff members at this extremely late juncture of the case.

And my third reason for cause under Subsection (d) of this rule is we have had an active, a very active Creditors' Committee in this case with sophisticated members and sophisticated professionals who negotiated getting more information, I think more useful information than this rule even contemplates with the various form blanks.

Now, obviously, I'm continuing this to September because,

if we don't have an effective date by early September, well, context matters, maybe that causes me to view this in a whole different light. But that is the ruling of the Court.

You know, I just want to say on behalf of the U.S. Trustee, I don't know if anyone's listening in, but it was an unfortunate use of words earlier, I think, saying, you know, secret deal with them. And I use unfortunate words all the time. I'm not being critical. But I just want to defend their honor here. Oh my goodness, they --

(Phone ringing.)

THE COURT: -- exercise integrity in every case I see to the utmost degree, and I suspect they were satisfied that the Committee was getting so much access to the Debtor, with the sharing of the privilege and the protocols, that it just didn't seem necessary in the facts and circumstances of this case to require strict compliance with 2015.3.

So I'm going to ask Mr. Pomerantz to upload a form of order reflective of my ruling. And, again, if --

Whose phone is ringing? Is there something going on with our equipment?

THE CLERK: No.

THE COURT: I don't know where that phone ringing is coming from.

THE CLERK: I can hear it.

THE COURT: Okay. So, you'll get a day from Ms.

Ellison in -- after labor day, and we'll see where we are. This will be a moot matter as far as I'm concerned if we've had an effective date at that point.

(Continued phone ringing.)

MR. POMERANTZ: Your Honor, one clarification I would ask to have. I don't think -- I think Your Honor intends that to be a status conference, so to save the Debtor from, you know, spending time in doing a pleading, and Mr. Draper as well, and Your Honor from reading them, I would say that there should be no pleadings filed in advance. We will appear before Your Honor with a status conference. And to the extent Your Honor determines there's further briefings or further issues that need to be decided, you could decide at that point. But no further briefing.

THE COURT: Okay. I think that is a fair request.

(Ringing stops.)

THE COURT: And so that -- that is the way we'll set this up. Status conference. No further pleading.

MR. DRAPER: Your Honor?

THE COURT: All right? Mr. Draper?

MR. DRAPER: Can I make a request, Your Honor? Can I change -- can I make a comment about the Court's ruling? Because I want to be transparent about this. And I think the Court's ruling, I would request that you shapeshift it a little bit.

If, in fact, you're going to take the position that if the plan goes effective, this issue -- this -- this motion is moot and will be denied, I think, quite frankly, why don't we enter that order now, rather than waiting. Because that at least gives me the ability to address the issue.

I don't think the rule has a waiver of it on the effective date. Let's -- let's get the issue before the -- before everybody. Because, again, as I said, if in fact your position is that if it goes effective I'm going to deny the relief and claim it's -- and assert it's moot in a ruling, I'm fine, let's get the ruling now. Because -- because my position is that that waiver -- there is no basis for that waiver due to time. The rule requires being filed through a point.

And, look, again, that way I'm not wasting the Court's time. We're not rearguing it. If we're not having new pleadings, let's get it over with.

MR. POMERANTZ: Your Honor, I would reject that. It's pretty transparent what Mr. Draper wants. He wants another appeal --

THE COURT: Uh-huh.

MR. POMERANTZ: -- because he wants to go to another court, and he's unhappy that Your Honor has essentially given an interlocutory order that he will be stuck with.

So we have, I think, close to a dozen appeals. We're

spending millions of dollars. And I find -- I find Mr. Draper's request, quite honestly, offensive, that it would require us to -- a lot more time and money on an issue we shouldn't. So, I would ask Your Honor to reject Mr. Draper's request.

THE COURT: All right. I do --

MR. DRAPER: And again, my --

THE COURT: -- reject it. That's exactly where my brain went, Mr. Draper. This is an order continuing your motion. Okay? And we'll have a status conference in early September on your motion.

And you know, again, I'm just letting you know my view it will be moot if the effective date has occurred, and then we'll get some sort of order to that effect issued at that time. And then I guess you'll have your final order that you can appeal if you want at that point.

The last thing I'm going to say is this. Mr. Draper, as I'm sure you remember, at some point many weeks back -- I think it was in January, actually -- I ordered that Mr. Dondero should be on the WebEx, or if we're live in the court for a hearing, live in the court, any time there's a hearing where he, his lawyers, have taken a position, filed an objection or filed the motion himself. If he and his lawyers are requesting relief or --

MR. DONDERO: I'm here.

THE COURT: -- objecting to relief, that he has to be in the courtroom.

I am now going to make the same requirement with regard to the trusts. Any time the trusts file a pleading seeking relief, object to a pleading seeking relief, file any kind of position paper, I'm going to require a trust representative to be in court.

Now, I don't know if that's the trustee, Nancy Dondero. I don't know if that's Mr. Dondero's wife, a sister, who that is. But it'll either be her or whoever the trustee is or Mr. Dondero as beneficiary. But it has gotten to that point. Okay? And --

MR. DRAPER: Your Honor?

THE COURT: And it's not -- it's not personal. I have said this before. I've done this in many cases. If we have a party who feels so invested in what's going on that they're waging litigation, litigation, litigation, at some point very often I will make this order. Like, okay, we're all spending a lot of time on what you want, so you need to show you're invested in it and be here with the rest of us. And, you know, potentially we're going to want testimony in certain contexts. Okay?

So I don't know who that human being is for the trusts, but I'm now to the point where I'm making that same order that I did with regard to Mr. Dondero personally. All right?

MR. POMERANTZ: Your Honor?

THE COURT: Yes?

MR. POMERANTZ: Your Honor, just to clarify, that's Mr. Dondero and the trustee.

And I would also ask Your Honor, I know Mr. Dondero will say that he was on, and that's what Mr. Taylor is going to say, he was on audio. I think, in order to have them actively participating, they should be on the video the entire hearing. Because if they're just on the phone on mute, Your Honor is not able to really tell if they are really listening. So I would ask Your Honor to clarify to both Mr. Draper and Mr. Taylor that, for both the trustee and Mr. Dondero, they should be on video.

THE COURT: All right.

MR. DRAPER: Your Honor, Mr. Dondero is on. You can see him down in the lower screen.

THE COURT: All right. Just so you know, I mean, the screen I'm looking at is not quite the same screen you're looking at. We have this Polycom. And I show that there are, you know, thirty-something people, but I only see the people who have most recently talked. Okay? So, I see you, Mr. Draper. I see Mr. Pomerantz. I see Mr. Clemente. A few minutes ago, I saw Mr. Morris. But, you know, we've set it up where I'm not overwhelmed with blocks; I'm just seeing the people when they speak.

MR. POMERANTZ: Your Honor, and those were the only four people whose videos were on during the entire hearing.

THE COURT: Oh, okay.

MR. POMERANTZ: So I hope Mr. Draper is not going to say that Mr. Dondero was on video, because he was not.

THE COURT: Okay.

MR. DRAPER: No, you can see -- Mr. Pomerantz, what I said is you can see him on the screen here. You can see that he has dialed in. I don't see him jumping up and down or his person.

THE COURT: Oh, okay.

MR. DRAPER: But it is clear that somebody dialed in on his behalf.

MR. POMERANTZ: Well, --

MR. DRAPER: Or he dialed in. He is -- he is present.

MR. POMERANTZ: Exactly. That's my point, Your Honor, that someone may have dialed in on his behalf. And I think Mr. Dondero, for them to have active, meaningful participation, because I think that's what Your Honor is getting at, that they should be here, engaged. And if we were in court like we were the other day, Mr. Dondero would have had to sit in Your Honor's courtroom. And if he is going to take up the time of Your Honor and all the parties, he and the trustee should be really engaged, which you cannot be if

you're only on the phone.

THE COURT: Okay. All right. Well, --

MR. DRAPER: Your Honor?

THE COURT: Go ahead, Mr. Draper.

MR. DRAPER: Mr. Dondero just talked a few moments ago, so Mr. Pomerantz heard him. This is -- this is truly unwarranted. He's appeared, he's here, and he's made a comment to the Court. So, again, we are invested. He was present at this hearing. He heard the hearing. And so, you know, I just don't know where this is coming from. I understand he missed a hearing before, but he is here for this one.

THE COURT: Okay. Well, I'm not going to get bogged down in this issue. I am going to issue an order, though, that is going to be reflective of what I said, and we'll just -- we'll make sure we have him check in or whoever the representative is of the trusts in future hearings and turn the video on and we'll make sure.

Again, this is -- I used the word frustrated the other day. I'm very frustrated. This is just -- this is -- it's out of control. Okay? I ordered mediation earlier in this case. I believed that an earnest effort was put in. But if we're not going to have settlement of issues, you know, I'll address these issues, but everyone who files a pleading, whether it's Mr. Dondero personally or the trusts, the family

trusts, and, of course, we're going to get -- I'm going to go the same direction, actually, with all these other entities. You know, it's -- I've gotten to where I had my law clerk the other day prepare me basically what was like a program from a sports event, you know, who represents which entities, because it's gotten overwhelming. And --

MR. POMERANTZ: Your --

THE COURT: And I mentioned the other day, I'm very close to requiring some sort of disclosures about the ownership of each of these entities, because I -- you know, the standing is just so tenuous, so tenuous with regard to certain of these entities. And I've erred on the side of being conservative and, you know, okay, we maybe have prudential standing, constitutional standing, even if it's kind of hard finding statutory standing under the Bankruptcy Code. But it's gotten to the point where it's just costing too much time and expense for me to not press some of these issues and hold people accountable.

So, Mr. Pomerantz, were you about to say something? I know that we had talked at another hearing about the Court maybe requiring some sort of disclosures for me to really understand party in interest status maybe better than I do.

MR. POMERANTZ: That, Your Honor, was where I was going to go before Your Honor made the comment. Your Honor made that comment a few weeks ago. I think, since then, quite

honestly, nothing really has changed. And I think it would be helpful -- it would be helpful for the Debtor, and more importantly, I think it would be helpful to the Court to have a list that you can refer to every time we are in a hearing of every entity that has appeared that Mr. Dondero has a relationship with, who the lawyers are, what the claims they filed, what the status of the claims they filed, and maybe even what litigation they are in pending with the Debtor.

We're happy with -- part of it we could prepare. But I would think Your Honor should order that from Mr. Dondero's related entities, because it might cut through a lot of it, and give Your Honor the information Your Honor needs and the context and perspective as you're hearing a lot of these motions.

THE COURT: All right. Well, is there anything else before we move on to the other matter? I'm about to close the loop on this by saying I am --

MR. TAYLOR: Your Honor? Your Honor?

THE COURT: Who is that speaking?

MR. TAYLOR: This is Clay -- this is Clay Taylor, Your Honor, --

THE COURT: All right.

MR. TAYLOR: -- representing Jim Dondero individually.

THE COURT: Okay.

MR. TAYLOR: And I just wanted to be heard. I've just listened in, even though Mr. Dondero was not the movant, because sometimes issues like this do come up where his name is thrown about.

First of all, Jim Dondero was indeed, as Mr. Draper said, was indeed present. He did indeed try to speak. I kind of overrode him. And because, you know, he needs to speak through his lawyer most of the time and shouldn't address the Court directly. But I wanted to let you know that Mr. Dondero was indeed on the line, was actively listening, and was participating.

As far as additional disclosures, it would be, I would just note, somewhat ironic if the Court denies the motion for what appears to be mandatory disclosures under Rule 2015.3 but then imposes additional disclosure requirements on somebody -- on another party, without any rule stating that there is such disclosures. It just -- it strikes me as ironic, and I would like Your Honor to consider that, at least, as Your Honor says, context matters.

You know, that's the context in which this arises. And we would just ask Your Honor to reflect upon that before she imposes additional duties upon my client.

But there is -- and the Debtor has asked for the response to be taken as a motion for leave to not comply with a rule, but yet Mr. Seery is not here. The UCC regularly

participates. Its members are not here. And so I just, to the extent Your Honor is going to impose duties upon certain parties, then what's good for the goose is good for the gander, Your Honor.

THE COURT: All right.

MR. POMERANTZ: Your Honor, I would point out that Mr. --

THE COURT: I respect your argument. I always respect your arguments, Mr. Taylor.

By the way, you aren't wearing a jacket. You know, next time you need to wear a jacket. And forgive me if I seem nagging, but I'm letting you all know, if you all are soon going to be having lots of litigation in the District Court, I promise you the district judges are way more formal than me and sticklers for every rule. You'll also be doing everything live in the courtroom, too. I'm just letting you know that.

But while I respect your argument, apples and oranges. I mean, the 2015.3 rule, not only is it not -- not -- I wouldn't say mandatory, since the Court has discretion for cause to waive the requirement. But it's a very onerous set of forms that would have to be filled out for 150 entities by 12 staff members. I don't really consider that the same as the disclosure that I'm now going to require.

But my law clerk and I will -- we'll craft a form of order that will be specific as far as what I'm going to require.

And, again, I think it's way beyond the point of this being necessary. And just so -- again, I'm wanting to explain this thoroughly. You know, standing -- for the nonlawyers; I don't know how many nonlawyers are on the phone, WebEx -- it's a subject matter jurisdiction thing. Okay? And, you know, if there's a dispute and someone involved in a dispute technically doesn't have standing, that means the Court didn't have subject matter jurisdiction to be adjudicating it. Okay? That's first year law school concept.

And it's been mentioned we have lots and lots of appeals, and I can promise you, if you've never been through the appellate process, that's the very first thing they'll look at -- you know, District Court, Fifth Circuit, any Court of Appeals -- because they have an overwhelming docket. And if there's a reason to push out this appeal before then because of lack of subject matter jurisdiction, which would include lack of standing, of course they are going to quickly get it off their plates because they have other things to get to, like criminal matters that are, you know, their top priority because of the Constitution.

So this has been an evolving thing with me. At some point, I feel like the Courts of Appeals that are involved with all of these appeals, they might be really, really zeroing in on the standing of parties more than perhaps even I have. So I want to do my job and I want it clear on the

record, this is why this person has standing or doesn't have standing. Okay? I just feel like we've gotten to that point. And so we'll issue an order in that regard, and it will, I promise you, be crystal clear.

Anything else?

MR. POMERANTZ: Your Honor, one last point. Mr. Taylor insinuated that the board is not present here, which is incorrect. A member or two members or three members of the board have been present at every hearing before Your Honor. And that's without an order requiring them to do so, because they are -- they are interested, they are engaged. Mr. Dubel is on the phone. He has been on the phone. I think this may have been only the second hearing that Mr. Seery has missed, felt it wasn't necessary to take him away from his running the company. So the Debtor has been, through its board members, fully engaged, and I just wanted Your Honor to know that, that we would never have a hearing before Your Honor without at least one member of the independent board listening in and participating as necessary.

THE COURT: All right. Thank you.

All right. Well, let's move on to the other contested matters, or adversary proceeding matters, I should say. And they're Adversary 21-3006 and 21-3007. We have Motions for Leave to Amend Answers. And do we have Ms. Drawhorn appearing for that motion or those motions?

MS. DRAWHORN: Yes, Your Honor. Lauren Drawhorn with Wick Phillips on behalf of Highland Capital Management Services, Inc. and NexPoint Real Estate Partners, LLP, formerly known as HCRE Partners, LLC.

THE COURT: All right. And who will be making the argument for the Debtor on this one?

MR. MORRIS: John Morris, Your Honor; Pachulski Stang Ziehl & Jones; for the Debtor.

THE COURT: All right. Are there any other appearances on this?

Okay. Ms. Drawhorn?

MS. DRAWHORN: Yes, Your Honor. We are -- so, my clients are seeking leave to amend the answer to add two affirmative defenses. As you know, under Rule 15(a), there is a bias towards granting leave, and leave should be freely granted unless there's a substantial reason to deny it.

The main factors that are considered in determining whether there is a substantial reason to deny a motion for leave to amend are prejudice, bad faith, and futility.

Here, there is no prejudice to the Plaintiff. Under the case law, if the -- as long as a proposed amendment is not presented on the eve of trial, continuing deadlines or reopening discovery does not constitute sufficient prejudice to deny leave.

Here, discovery does not close until July 5th for Highland

Capital Management Services, and it does not close until July 26th for NexPoint Real Estate Partners.

The Plaintiff has not -- neither party has taken any depositions in this case. And we are open and willing to extend the discovery deadlines if necessary. We think that discovery can be extended as necessary without extending any dispositive motion deadline or the docket call which are set in August. Dispositive motions are August 16th for Highland Capital Management and September 6th for NexPoint Real Estate Partners, with docket call in those cases being October and November.

So there's significant time. If the -- if the party just wants to conduct additional written discovery, I think that that -- they would be easily be able to do that.

We're also open to continuing all the deadlines in this case, and practically speaking, those -- the deadlines may be continued depending on what happens with the pending motion to withdraw the reference and the motion to stay.

So we don't think -- we don't see any reason why our amended additional affirmative defenses will result in any prejudice to the Plaintiff, and don't see that as a reason -- a substantial reason to deny the motion for leave.

There is no bad faith here. The motion for leave was filed two months after our original answer. Again, this is not a situation where we're trying to add a new defense on the

eve of trial. We're not even waiting until after discovery is closed to try and add this new defense. And it's not after one of our prior defenses failed. Instead, we've been conducting additional investigations, preparing for written discovery. And as set forth in more detail in the Sauter declaration that was filed yesterday, we discovered these additional defenses through that additional investigation.

So there's certainly no bad faith here in adding these two defenses. We are just trying to make sure that we can prove up our defenses and prove up our case on the merits, as we need to.

And then the last factor, the new affirmative defenses we're seeking to add, they're not futile. I cited some cases in the pleadings. There are some judges in the Northern District of Texas that refrain from even evaluating futility at this stage, at a motion for leave to amend stage, preferring to address those on a motion for summary judgment situation. But even when it is considered, futility looks more at is there a statute of limitations that prevents the claim from being successful, or does the court lack subject matter on its face, based on this defense? And that's not the case here.

The Debtor -- the Plaintiff tries to argue on the merits of our affirmative defenses, and a motion for leave to amend is not a basis for that. This isn't a motion for summary

judgment. This is just -- just a motion for leave to add these defense, and they can certainly address the merits later on in the case.

So we think we provided sufficient notice in our proposed amendment. I mean, our proposed amended answer. To the extent we need to add any specifics, we are certainly open to. We've noted them in our reply. The ambiguity is -- is to the notes as a whole. We noted the Highland Capital Management, there's two notes that are signed by Frank Waterhouse without indication of corporate capacity, which creates some ambiguity. The notes reference other related agreements, which create some ambiguity. So we think there's sufficient pleading of these new defenses to support leave to amend and address those on the merits.

And then the condition subsequent defenses, while we -- the schedules and the SOFAs, the notes related to that reference that some loans between parties and related -- to affiliates and related entities may not be enforceable, we think that supports our position and this defense here, now that we've furthered our investigation and heard about this additional subsequent agreement that supports the condition subsequent.

And the opposition, the Plaintiff's opposition notes that there has been some discovery on this defense. It's similar to one that's asserted in a related note adversary. And

while, again, they try to assert the merits and the credibility of certain testimony, that's -- that's a decision, credibility of a witness is a decision for a fact finder and not for this stage of the proceedings and not for a motion for leave to amend.

So we don't believe there's a substantial reason to deny leave. Again, under Rule 15, leave should be granted freely. And so we would request that the Court grant our motion for leave to amend so that we can have our amended answer and affirmative defenses in this case.

THE COURT: All right. Well, Mr. Morris, you know, the law is not too much in your favor on this one. So what do you have to say?

MR. MORRIS: I have to say a few things first, Your Honor. The notes are one of the most significant assets of the estate. As the Court will recall at the confirmation hearing, Mr. Dondero and all of his affiliated entities objected to confirmation on the ground -- challenging, among other things, both the liquidation analysis as well as the projections on feasibility going forward.

One of the assumptions in those projections and in the liquidation analysis was indeed the collection of these notes in 2021. They all sat on their hands, attacked the projections, attacked the liquidation analysis, but never on the grounds that the notes wouldn't be collectable in 2001

[sic], never informing the Court that there was some agreement by which collection would be called into question, never ever disclosing to anybody that the plan might not be feasible or the liquidation analysis might not be accurate because these notes were uncollectable.

So what happened after that, Your Honor? We commenced these actions. Actually, before the hearing. We actually commenced these actions before the confirmation hearing, when they sat silently on this.

And Mr. Dondero's first answer, because this is all very important because they say that they're -- they're piggybacking on Mr. Dondero. Mr. Dondero's first answer to the complaint said, I don't have to pay because there is an agreement by which the Debtor said they would not collect. It's in the record. It's attached to my declaration. And that was it. Full stop. I don't have to pay because the Debtor agreed that I would not have to collect.

So we served a request for admission. Admit that you didn't pay taxes. He realized, okay, that defense doesn't work, so he changes it completely and he amends his answer. Now the amended answer says, I don't -- the Debtor agreed that I wouldn't have to pay based on conditions subsequent.

And we said, what are those conditions subsequent? Please tell us in an interrogatory response. And under oath, Mr. Dondero said, I don't have to pay if the Debtor sells their

assets in the future. At a favorable price, I think it says. Again, this is in the record. And we asked him under oath, who made that agreement on behalf of the Debtor? And he said, I did.

And Your Honor will recall that we had a hearing on that very defense, on the motion to compel, where they said Mr. Seery has to come in and testify to the defense that Mr. Dondero made this agreement with himself. And then the following week, on a Tuesday, we had the hearing on the motion to withdraw the reference, and Your Honor said finish discovery, because we told you discovery was going to be concluded on Friday with Mr. Dondero's deposition. You know what they did, Your Honor? The night before the hearing, they amended Mr. Dondero's interrogatory. Again, these are sworn statements. They amended it again to say he didn't enter the agreement on behalf of the Debtor; Nancy Dondero, his sister, did.

And then I took his deposition. And we're going to get to that in a moment, because I'm going to put it up on the screen so you can see these answers, Your Honor. And I say this by way of background because it goes to both good faith -- or, actually, bad faith -- as well as the lack of a bona fide affirmative defense here.

This is -- there are five notes litigation. One against Mr. Dondero. So that's package number one. And they're

represented by the Stinson firm, who is signing all of these things. The Stinson firm is out there claiming that in good faith each of these -- each of these amendments, each of these amendments to the interrogatories, are in good faith. They're not in good faith, Your Honor. They're just not.

And the Bonds firm.

Then bucket two is what we have here today. That's HCRE and Highland Capital Management Services. They're represented by Ms. Drawhorn. I think the Stinson firm has now also entered an appearance in those two adversary proceedings.

And the other two are against the two Advisors. More entities controlled by Dondero. And Mr. Rukavina, I believe, last night filed his motion to amend to add these same defenses.

Okay? Is this good faith? I don't think this is good faith.

Let's look at Mr. Dondero's testimony so that the Court has an understanding of what we're talking about here. I think I have Ms. Canty on the phone, and I'd ask her to go to Page 178. 3. Just going to read (garbled) so you can see. This was Mr. Dondero's testimony the day after telling me that he amended his interrogatory -- sworn interrogatory answer to say that he didn't enter the agreement on behalf of the Debtor but Ms. -- but Ms. Dondero, his sister, did.

Question. Are we -- 178, please.

MS. DRAWHORN: Your Honor, I would --

MR. MORRIS: Question. Please --

MS. DRAWHORN: This is not testimony in this adversary and I was not -- my clients were not present at this deposition that Mr. Morris is referring to, so I --

MR. MORRIS: Your Honor, with all due respect, she's interrupting me, and I would ask her to allow me to finish my presentation and then she can make whatever comments she wants. Because -- because --

MS. DRAWHORN: Well, I'm objecting to this testimony --

THE COURT: Okay.

MS. DRAWHORN: -- coming into evidence.

THE COURT: Okay. So your objection is -- if you could just articulate your objection for the record, please, Ms. Drawhorn.

MS. DRAWHORN: I would object to this -- this deposition is not in this proceeding, this adversary proceeding, either of these two the adversary proceedings, and my client was not present at this deposition, so I would object to it as hearsay.

THE COURT: Response?

MR. MORRIS: Your Honor, if I may, I think this -- this points to just one of the fundamental problems that we have here. As we pointed out in our objection, the Debtor, as

we sit here right now, still has no notice of the facts and circumstances surrounding this alleged agreement. We still don't know who entered into the agreement on behalf of the Debtor. We don't know what the terms of the agreement were. We don't know when the agreement was entered into. We don't -- right?

If they're going to assert that there's an agreement -- and they seem to be piggybacking on this conversation between Mr. Dondero and his sister. If there's a different one, they need to say that right now. They need to put their cards on the table and they need to inform the Debtor who entered the agreement on behalf of the Debtor pursuant to which the Debtor agreed to waive millions and millions of dollars without telling anybody.

THE COURT: Okay. I overrule the objection. We can go through the transcript.

MR. MORRIS: So, I'm just going to use part of it, Your Honor. But on Lines 3 to 7:

"Q Did anybody else participate -- did anybody participate in any of the conversations other than you and your sister?

"A I don't believe it was necessary. It didn't include anybody else."

Go down to Line 19, please.

"Q Was the agreement subject to any negotiation? Did

she make any kind of -- any counterproposal of any kind?

"A No."

Page 179, Line 2.

"Q Do you know if she sought any independent advice before entering into the agreement that you have described?

"A I don't know."

Line 23, please.

"Q Do you know if there were any resolutions that were adopted by Highland to reflect the agreement that's referred to in the -- in the answer?

"A Resolutions that -- no. Not that I'm aware of."

Page 180, Line 5.

"Q Did you give Nancy a copy of the promissory notes that were a subject of the agreement?

"A No."

Continue.

"Q Did she ask to see any documents before entering into the agreement that's referred to?

"A I don't remember."

Page 181, Line 19.

"Q Under the agreement that you reached with Nancy that's referred to in Paragraph 40, was it your understanding that Highland surrendered its right to

make a demand for payment of unpaid principal and interest under the notes?

"A Essentially, I think so."

Page 219. I'll just summarize 219, Your Honor. Mr. Dondero has no recollection of telling Mr. Waterhouse, the chief financial officer, or any other employee of Highland that he'd entered into this agreement with his sister pursuant to which the Debtor agreed to not collect almost $10 million of principal and interest.

Now let's -- let's go -- I think it's really -- because it took me an awfully long time to get there. On Page 214 at Lines 16 through 24. This is what the agreement was, because this is -- this is -- this is his third try to describe the agreement. Right? The first time -- it's just his third try, and this is what the agreement is, Your Honor.

"Q Did you and Nancy agree in January or February 2019 that if Highland sold either MGM or Cornerstone or Trussway for an amount that was equal to at least one dollar more than cost, that Highland would forgive your obligations under the three notes?

"A I believe that is correct."

That's -- that's the agreement. It took him three times to get there, but look at -- look at that. He and his sister did that.

And I do want to point out, Your Honor, that in their

opposition that they filed last night, the Defendants claim that Ms. Dondero was authorized because she was -- she was the trustee of Dugaboy and Dugaboy holds the majority of the limited partnership interests in the Debtor and therefore she had the authority to enter into the agreement on behalf of the Debtor.

There is that flippant -- there is just that unsupported statement out there. Section 4.2(b) of the limited partnership agreement says, and I quote, "No limited partner shall take part in the control of the partnership's business, transact any business in the partnership's name, or have the power to sign documents for or otherwise bind the partnership, other than as specifically set forth in the agreement."

So I look forward to hearing what basis there was to submit a document to this Court that Nancy Dondero had the authority to bind the Debtor in an agreement with her brother pursuant to which tens of millions of dollars was apparently forgiven.

Can we go to Page 238? This is the last piece, Your Honor. The Debtor's outside auditors were PricewaterhouseCoopers. There's management representation letters signed by both Mr. Dondero and Mr. Waterhouse attesting that they had given their auditors all of the information necessary to conduct the audit. We will get to that in due course, but these are very important questions

right here.

What page are we on? Is it 238? Okay. So, Line 16, I believe.

"Q You knew at the time -- you knew at the time the audited financials were finalized that Highland was carrying on its balance sheet notes and other amounts due from affiliates?

"A Yep."

And if we could just keep going, Your Honor, you will see:

"Q Did you personally tell anybody at PricewaterhouseCoopers in connection with the preparation of the audited financial statements for 2018 that you and your sister had entered into the agreement with your sister Nancy in January or February of 2019?

"A Not that I recall."

There's a lot more here, Your Honor. I'm really just touching the surface. I am going to take Nancy's deposition later this month. But there is -- this is wrong. This is just all so wrong. For three different reasons. At least. This is not a viable defense and will never be a viable defense.

The audited financial statements carry these loans as assets on the books, without qualification, and they were subject to Mr. Dondero and Mr. Waterhouse's representations.

There is partial performance. These entities that we're talking about today, they made payments on these notes. How do you make payments on the notes and then come to this Court and say the notes are ambiguous? How do you -- how do you make payments on the notes and come to this Court and tell this Court, I just learned that there was an agreement by which I don't have to pay, subject to conditions precedent in the future.

Mr. Sauter submits a declaration in support of this motion. He has no personal knowledge. He states in Paragraph 14 that his review of the Defendants' books and records did not reveal any background facts regarding the notes. Mr. Dondero is the maker on all of the notes except for two of them. Mr. Dondero owns and controls the Defendants. Mr. Dondero was not employed or otherwise affiliated with the Debtor after these actions were commenced. Mr. Sauter takes Mr. Seery to task for telling the Debtor's employees not to take actions that were adverse, and he uses that as his excuse for not knowing these facts. He is the general counsel. He was served with a complaint that alleged that his clients were liable for millions and millions of dollars. His boss is James Dondero. He had unfettered access to James Dondero. Mr. Dondero is the one who signed the notes, except for two of them. There is absolutely no excuse for not doing the diligence to find out from Mr. Dondero that this defense

existed.

And you know why it didn't happen? Because the defense is not real. It is completely fabricated. It continues to change and evolve every single time I -- every single time I talk about these note cases, it's a new defense, it's a different defense, the contours change, somebody else is involved. This is an abuse of process, Your Honor. It is bad faith. It just really is. And somebody's got to start to take responsibility and say, I won't do this. I won't do this.

Somebody's got to stand up and say that, because, I'm telling you, it's not enough, Your Honor, that the Debtor is going to collect all of its fees under the notes at the end of this process. It's not enough, because we're now giving an interest-free loan. These are -- these are notes that are part of the Debtor's plan that nobody objected to, that nobody suggested were the subject of some condition subsequent.

This is not your normal, you know, gee, I'd like leave to amend the complaint. They're simply following what Mr. Dondero did. And I would really ask the Court to press the Defendants to identify specifically who made the agreement on behalf of the Debtors, when was the agreement made, is there any document that they know of today that reflects this agreement, and what were the terms of the agreement? Is it really that he would sell -- if he sells MGM for a dollar over

cost, $70 million of notes get forgiven? How is that possible? How is that possible? It doesn't pass the good faith test. The Court should deny the motion.

Thank you, Your Honor.

THE COURT: Mr. Morris, in all of your listing of allegedly problematic things, one trail my brain was going down is this: Is this adversary going to morph even further to add fraudulent transfer allegations? I mean, if notes --

MR. MORRIS: Here's the --

THE COURT: -- were forgiven or agreements were made --

MR. MORRIS: Yeah, I --

THE COURT: -- that they would be forgiven if, you know, assets are sold at a dollar more than cost, is the Debtor going to say, well, okay, if this is an agreement, there was a fraudulent transfer?

MR. MORRIS: Your Honor, that is an excellent question, one which I was discussing with my partners just this morning. You know, we have to -- we're balancing a number of things on our side, including the delay that that might entail; including, you know, what happens if we go down that path. You know, the benefit of suing under the notes, of course, is that he's contractually obligated to pay all of our fees.

And so we're balancing all of those things as these -- as

these defenses metastasize. But it's something that we're considering, and we reserve the right to do exactly that, as these defenses continue to get -- and it would be fraudulent transfer, it would be breach of fiduciary duty against Nancy Dondero, it would be breach of fiduciary duty against Jim Dondero. I'm sure that there are other claims, Your Honor. But if they want to -- if I'm forced to go down that path, I'm certainly going to use every tool that I have available to recover these amounts from the -- for the Debtor and their creditors. This is just an abuse of process.

How do you -- how does one enter into agreements of this type without telling your CFO, without telling your auditors, without putting it in writing? And I asked Mr. Dondero, what benefit did the Debtor get from all of this? And you know what his answer was, Your Honor? Because it's really -- it's appalling. It was going to give him heightened focus on getting the job done because of this agreement that he entered into with his sister, Nancy, acting on behalf of the Debtor, with no information, with no documents, with no notes, with no advice, with no corporate resolutions. The Debtor was going to get Mr. Dondero's heightened focus to sell MGM, Trussway, or Cornerstone for one dollar above cost.

I think the fraudulent transfer claim is probably a pretty solid one. But why do we have to do this? Why do we have to do this?

THE COURT: Well, one of the reasons I'm asking is I would not set the motion to withdraw the reference status conference on an expedited basis, which I was asked to do a few days ago in these two adversary proceedings, and I can't remember when I've set it, but now I'm even worried, if I grant this motion, is it going to be premature to have that status conference in a month or so, whenever I've set it, because if I grant this motion I'm wondering, am I going to have your motion to amend to add fraudulent transfer claims? It's -- you know, I want to give as complete a package to the District Court as I can whenever I have that motion to withdraw the reference.

All right. Ms. Drawhorn, back to you. As I said --

MS. DRAWHORN: Yes.

THE COURT: -- before inviting Mr. Morris to make his argument, I know the law is very much on your clients' favor as far as the law construing Rule 15(a). But my goodness, I'm wondering if your client needs -- your client needs to be careful what they're asking for here, after what I've just heard.

Anyway, what -- you get the last word on this.

MS. DRAWHORN: Yes. Thank you, Your Honor. My response is that Mr. Morris's argument was all on the merits of the defenses, and certainly he is free to argue on the merits, but that's not a determination for today and that's

not a determination for the motion for leave to amend. That's a determination for if he files a dispositive motion.

Like I said, we are still in the discovery phase. Mr. Morris mentioned at least three parties that will be -- likely be deposed and potentially give us the additional information that he's asking for to support this defense. He mentioned PricewaterhouseCoopers; Nancy Dondero, who he's already got scheduled in a different adversary; Frank Waterhouse.

So it's too early, as you know, to look at the merits. That's not -- that's not what's the focus of a motion for leave to amend.

As to the -- the what amendment, what agreement, what are the conditions subsequent, I believe we provided sufficient information in our reply. And if the Court would like us to update our proposed amended answer, if the Court is inclined to grant our motion, we can certainly do that. But I think the Plaintiff seems to be well aware of what the defenses are, especially after his argument today on why he thinks it's not a valid defense.

And then, on the due diligence, we did -- we did do due diligence. That's why we're seeking to amend the answer, obviously, and add these claims.

If the Court -- if the Plaintiff wants to file a motion to amend later, then we can address those amendments then.

But I think, on the Rule 15 standard, we have met our

burden and there's no substantial reason to deny the motion to amend to add these defenses.

THE COURT: All right. By the way, have your clients, have they filed proofs of claim? And I'm asking for a different reason than maybe I was asking earlier. NexPoint Real Estate Partners?

MS. DRAWHORN: They're -- NexPoint Real Estate Partners, LLC, formerly known as HCRE Partners, does have a proof of claim on file. It's unrelated to the notes. And it is subject to a contested matter that's pending -- that's a separate matter that's before the Court being addressed.

And then HCMS initially filed a proof of claim that was objected to in the Debtor's first omnibus objection and then was disallowed. There was no response to that omnibus objection, so there's no longer a proof of claim for Highland Capital Management Services.

THE COURT: Okay. Again, I'm just thinking ahead to this report and recommendation I'm eventually going to have to make on the motions to withdraw the reference. And as I alluded to, if this morphs to the point of including fraudulent transfer claims, that certainly --

MS. DRAWHORN: And Your Honor, one --

THE COURT: It's going to affect the report and recommendation. And, you know, proofs of claim affect that, too. So, --

MS. DRAWHORN: Uh-huh. Yes. And I understand that, Your Honor. And the issue, I think, with you -- we need to have this motion resolved, because it -- unless the Court is going to continue discovery or stay. You know, one of the reasons why we had initially requested the expedited hearing was because of the discovery is continued -- continuing to -- discovery deadlines are continuing to move. And obviously whatever the Court decides on this motion for leave to amend will determine what the scope of that discovery is.

Similarly, if the Debtor decides to amend, that could change the scope of discovery as well.

So we are open to continuing deadlines, and I think, you know, might end up filing a motion to continue. I haven't conferred with Mr. Morris yet. I suspect he's opposed, based on our prior conversations. But that's something that might be helpful, especially if the Court is concerned on how it will affect the motion to withdraw the reference, to -- maybe we continue some of these upcoming deadlines, and that might appease, you know, solve some of your concerns.

THE COURT: All right. Well, Rule 15(a), of course, is the governing rule here, and the case law is abundant that courts "should freely give leave when justice so requires." And the law is also abundantly clear that the rule "evinces a bias in favor of granting leave to amend." And again and again, cases say that leave should be granted unless there's

substantial reason to deny leave, and courts may consider factors such as delay or prejudice to the non-movant, bad faith or dilatory motives on the part of the movant, repeated failure to cure deficiencies, or futility of the amendment.

While the Debtor has presented arguments that there might be bad faith here on the part of the Movants and there might be futility in allowing the amendments because of various strong arguments and defenses the Debtor believes it has to this issue of agreements with regard to the notes that allegedly provide affirmative defenses, the Court believes the rule requires me to allow leave to amend the answer.

Now, a couple of things. I am going to require, though, that the amended answer be more specific than has been suggested. I am going to agree that if new affirmative defenses are made that there was this agreement to forgive when certain conditions happened, then there does need to be identification of who the human beings were that were involved in making the agreement, the date of any agreement or agreements, and disclose what documents substantiate the agreement or reflect the agreement. All right? So if that could --

MR. MORRIS: Your Honor?

THE COURT: Yes?

MR. MORRIS: John Morris. I apologize for interrupting, but just a fourth thing is what is the

agreement? I mean, what is the agreement?

THE COURT: Well, okay. That's fair enough. What is the agreement? I guess --

MR. MORRIS: And -- and --

THE COURT: -- that needs to be spelled out. I mean, I guess I was assuming that that would be spelled out in -- but maybe it's not. So we'll go ahead and add that.

As far as extension of the discovery, Ms. Drawhorn has offered that. I think it would be reasonable if the Debtor or Plaintiff wants that. Do you want an extension of discovery?

MR. MORRIS: What I really want, Your Honor, is a direction for them to serve this amended answer within 24 or 48 hours and grant leave to the Debtor to promptly file written discovery. We've got Nancy Dondero -- if it turns out -- and maybe Ms. Drawhorn can just answer the question right now. Who entered the agreement on behalf of the Debtor? Because I'm already taking Nancy Dondero's deposition on the 28th. And it seems to me, if they would just answer the question of whether Ms. Dondero is the person who did that, I could just add a notice of deposition and take the deposition on that date, too, and it would be, really, more efficient for everybody.

THE COURT: Ms. Drawhorn, who was the human being?

MS. DRAWHORN: Yes. It was -- yes, Nancy Dondero entered into the -- the subsequent agreement.

MR. MORRIS: Okay. Super.

THE COURT: All right. You said you've already --

MR. MORRIS: So, --

THE COURT: -- got a depo scheduled of her?

MS. DRAWHORN: Well, what's the date --

MR. MORRIS: I do --

MS. DRAWHORN: -- Mr. Morris?

MR. MORRIS: I believe it's the 28th. Your co-counsel can confirm, but I think it's the 28th.

And I'll just get another deposition notice for that one, and we'll figure out a time to take Mr. Sauter's deposition, too.

But I don't think that there is a need, frankly, for -- having been told by Mr. Dondero that there's no documents related to this, having the Court just ordered the Defendants to disclose the identity of any documents that relate to this agreement, I don't think we need to extend the discovery deadline at all. I can take Ms. Dondero's deposition, I can take Mr. Dondero's deposition, and I can take Mr. Sauter's deposition in due course over the next four weeks.

THE COURT: All right. Well, Ms. Drawhorn, we'll say that this amended answer needs to be filed by midnight Friday night, 11:59. That gives you a day and a half to get it done. All right. If you could please --

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Please upload an order, Ms. Drawhorn, granting your motion with these specific requirements that I've orally worked in.

I think clients need to be careful what they ask for. I'm very concerned. And I know it was just argument and I'll hear evidence, but of all of the things that I guess -- well, I'm concerned about a lot of things, but do we have audited financial statements that didn't disclose these agreements with regard to --

MR. MORRIS: Yes, Your Honor.

THE COURT: I mean, that's -- I'm just -- you know, there's a lot to be concerned about on that point alone, I would think. But, all right. If there's nothing further, we are adjourned. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 11:58 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/12/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

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TAB 2

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

Signed June 17, 2021

United States Bankruptcy Judge

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

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

ORDER REQUIRING DISCLOSURES

I. Introduction.

This Order is issued by the court *sua sponte* pursuant to Section 105 of the Bankruptcy Code and the court's inherent ability to efficiently monitor its docket and evaluate the standing of parties who ask for relief in the above-referenced case. More specifically, the Order is directed at clarifying the party-in-interest status or standing of numerous parties who are regularly filing pleadings in the above-referenced 20-month-old Chapter 11 bankruptcy case. The court has determined that there is

[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.

a need to: (a) fully understand whether such parties (defined below) have statutory or constitutional standing with regard to recurring matters on which they frequently file lengthy and contentious pleadings and, if so, (b) ascertain whether their interests are sufficiently aligned such that the parties might be required to file joint pleadings hence forth, rather than each file pleadings that are similar in content. The court has commented many times that certain active parties (*i.e.*, Mr. James Dondero and numerous non-debtor entities that he controls—hereinafter the "Non-Debtor Dondero-Related Entities") seem to have tenuous standing. Mr. Dondero is, of course, the Debtor's co-founder, former President, Chief Executive Officer ("CEO"), and indirect beneficial equity owner.[2] Since standing is a subject matter jurisdiction concern, the court has determined that it is in the interests of judicial economy to gain some clarity with regard to the standing of the various Non-Debtor Dondero-Related Entities. It is also in the interests of judicial economy, the interests of other parties in this case, and in the interest of reducing administrative expenses of this estate that there be consolidation of pleadings, wherever possible, of the Non-Debtor Dondero-Related Entities.

[2] In addition to being the former CEO, Mr. Dondero represents that he is a "creditor, indirect equity security holder, and party in interest" in the Debtor's bankruptcy. This court has stated on various occasions that this assertion is ostensibly true, but somewhat tenuous. Mr. Dondero filed five proofs of claim in the Debtor's bankruptcy case. Two of those proofs of claim were withdrawn with prejudice on November 23, 2020 [DE # 1460]. The other three are unliquidated, contingent claims, each of which stated that Mr. Dondero would "update his claim in the next ninety days." Ninety days has long-since passed since those proofs of claim were filed and Mr. Dondero has not updated those claims to this court's knowledge. With regard to Mr. Dondero's assertion that he is an "indirect equity security holder," the details have been represented to the court many times to be as follows (undisputed): 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 paid.

II. Background: The Chapter 11 Case.[3]

On October 16, 2019 (the "Petition Date"), Highland filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Highland is a registered investment advisor that is in the business of buying, selling, and managing assets on behalf of its managed investment vehicles. It manages billions of dollars of assets—to be clear, the assets are spread out in numerous, separate fund vehicles. While the Debtor has continued to operate and manage its business as a debtor-in-possession, the role of Mr. Dondero *vis-à-vis* the Debtor was significantly limited early in the bankruptcy case and ultimately terminated. The Debtor's current CEO is an individual selected by the creditors named James P. Seery.

Specifically, early in the case, the Official Unsecured Creditors Committee ("UCC") and the U.S. Trustee ("UST") desired to have a Chapter 11 Trustee appointed—absent some major change in corporate governance[4]—due to conflicts of interest and the alleged self-serving, improper acts of Mr. Dondero and possibly other officers (for example, allegedly engaging, for years, in fraudulent schemes to put Highland's assets out of the reach of creditors). Under this pressure, the Debtor negotiated a term sheet and settlement with the UCC (the "January 2020 Corporate Governance Settlement"), which was executed by Mr. Dondero and approved by a court order on January 9, 2020 (the "January 2020 Corporate Governance Order").[5] The settlement and term sheet contemplated a complete overhaul of the corporate governance structure of the Debtor. Mr. Dondero resigned from his role as an officer and director of the Debtor and of its general partner. Three new independent directors (the "Independent Board") were appointed to govern the Debtor's

[3] For a more detailed factual description of some of the disputed issues in this case, see the Memorandum of Opinion and Order Granting in Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO, entered June 7, 2021, DE # 190, in AP # 20-3190.
[4] The UST was steadfast in wanting a Trustee.
[5] *See* DE ## 281 & 339.

general partner Strand Advisors, Inc.—which, in turn, managed the Debtor. All of the new Independent Board members were selected by the UCC and are very experienced within either the industry in which the Debtor operates, restructuring, or both (Retired Bankruptcy Judge Russell Nelms, John Dubel, and James P. Seery). As noted above, one of the Independent Board members, James P. Seery ("Mr. Seery"), was ultimately appointed as the Debtor's new CEO and CRO.[6] As for Mr. Dondero, while not originally contemplated as part of the January 2020 Corporate Governance Settlement, the Debtor proposed at the hearing on the January 2020 Corporate Governance Settlement that Mr. Dondero remain on as an unpaid employee of the Debtor and also continue to serve as and retain the title of a portfolio manager for certain separate ***non-Debtor*** investment vehicles/entities whose funds are managed by the Debtor. The court approved this arrangement when the UCC ultimately did not oppose it. Mr. Dondero's authority with the Debtor was subject to oversight by the Independent Board, and Mr. Seery was given authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its subsidiaries, as well as the purchase and sale of assets that the Debtor manages for various separate non-Debtor investment vehicles/entities. Significant to the court and the UCC was a provision in the order, at paragraph 9, stating that "Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor."

To be sure, this was a complex arrangement. Apparently, there were well-meaning professionals in the case that thought that having the founder and "face" behind the Highland brand still involved with the business might be value-enhancing for the Debtor and its creditors (even though Mr. Dondero was perceived as not being the type of fiduciary needed to steer the ship through bankruptcy). For sake of clarity, it should be understood that there are at least hundreds of

[6] "CRO" means Chief Restructuring Officer. *See* DE # 854, entered July 16, 2020.

entities—the lawyers have sometimes said 2,000 entities—within the Highland byzantine organizational structure (sometimes referred to as the "Highland complex"), most of which are ***not*** subsidiaries of the Debtor, nor otherwise owned by Highland. And only Highland itself is in bankruptcy. However, these entities are very much intertwined with Highland—in that they have shared services agreements, sub-advisory agreements, payroll reimbursement agreements, or perhaps, in some cases, less formal arrangements with Highland. Through these agreements Highland (***through its own employees***) has historically provided resources such as fund managers, legal and accounting services, IT support, office space, and other overhead. Many of these non-Debtor entities appear to be under the *de facto* control of Mr. Dondero—as he is the president and portfolio manager for many or most of them—although Mr. Dondero and certain of these entities stress that these entities have board members with independent decision making power and are not the mere "puppets" of Mr. Dondero. This court has never been provided a complete organizational chart that shows ownership and affiliations of all 2,000 Non-Debtor Dondero-Related Entities, but the court has, on occasion, been shown information about some of them and is aware that a great many of them were formed in non-U.S. jurisdictions, such as the Cayman Islands.

Eventually, the Debtor's new Independent Board and management concluded that it was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity. Various events occurred that led to the termination of his employment with the Debtor. For one thing, Mr. Dondero prominently opposed certain actions taken by the Debtor through its CEO and Independent Board including: (a) objecting to a significant settlement that the Debtor had reached in court-ordered mediation[7] with creditors Acis Capital Management and Josh and Jennifer Terry (the "Acis

[7] The court appointed Retired Bankruptcy Judge Allan Gropper, S.D.N.Y., and Attorney Sylvia Mayer, Houston, Texas (both with the American Arbitration Association), to be co-mediators over multiple disputes in the Bankruptcy Case, including the Acis dispute. The co-mediators, among other things, attempted to mediate disputes/issues with Mr. Dondero.

Settlement")—which settlement helped pave the way toward a consensual Chapter 11 plan, and (b) pursuing, through one of his family trusts (the Dugaboy Investment Trust), a proof of claim alleging that the Debtor (including Mr. Seery) had mismanaged one of the Debtor's subsidiaries, Highland Multi Strategy Credit Fund, L.P. ("MSCF") with respect to the sale of certain of its assets during the bankruptcy case (in May of 2020).[8] The Debtor's Independent Board and management considered these two actions to create a conflict of interest— if Mr. Dondero was going to litigate significant issues against the Debtor in court, that was his right, but he could not continue to work for the Debtor (among other things, having access to its computers and office space) while litigating these issues with the Debtor in court.

But the termination of his employment was not the end of the friction between the Debtor and Mr. Dondero. In fact, literally a week after his termination, litigation posturing and disputes began erupting between Mr. Dondero and certain Non-Debtor Dondero-Related Entities, on the one hand, and the Debtor on the other.

At the present time, 11 adversary proceedings have been filed related to this bankruptcy case involving Non-Debtor Dondero-Related Entities. Additionally, Non-Debtor Dondero-Related entities have filed 11 appeals of bankruptcy court orders. Non-Debtor Dondero-Related entities have begun filing lawsuits relating to the bankruptcy case in other *fora* that are the subject of contempt motions.

III. **The Non-Debtor Dondero-Related Entities**.

The following are the Non-Debtor Dondero-Related Entities encompassed by this Order and their known counsel[9]:

[8] *See, e.g.*, Proof of Claim No. 177 and DE # 1154.
[9] There are three other entities that the court is not including in this Order at this time, since, although they have appeared in the past, they are no longer active in the case because of either resolving issues with the Debtor or other reasons: (a) Highland CLO Funding Ltd. (previously represented by the law firm of King and Spaulding); (b) Hunter

A. James D. Dondero

Mr. Dondero has had three law firms representing him in the bankruptcy proceedings: Bonds Ellis Eppich Schafer Jones LLP; Stinson L.L.P.; and Crawford Wishnew Lang.

As earlier mentioned, Mr. Dondero has three pending proofs of claim that are unliquidated, contingent claims. Each of these claims state that Mr. Dondero would "update his claim in the next ninety days." Ninety days has long-since passed since those proofs of claim were filed and Mr. Dondero has not updated those claims to this court's knowledge. While this court is unclear what the alleged amount of Mr. Dondero's three unliquidated, contingent proofs of claim might be, the court takes judicial notice that the Debtor has filed an adversary proceeding (Adv. Proc. # 21-3003) alleging that Mr. Dondero is liable to three bankruptcy estate on three demand notes, on which the total amount due and owing is $9,004,013.07. Mr. Dondero has also been sued along with CLO Holdco, Grant Scott, Charitable DAF Holdco, Charitable DAF Fund, Highland Dallas Foundation, and the Get Good Trust for alleged fraudulent transfers in Adv. Proc. # 20-3195.

As far as equity interests in the Debtor, the Debtor is a Delaware limited partnership. The general partner is named Strand Advisors, Inc. ("Strand"). Mr. Dondero owns 100% of Strand Advisors, Inc. ("Strand"), the Debtor's general partner, but gave up control of Strand pursuant to a court-approved corporate governance agreement reached in this case in January 2020, to which Mr. Dondero agreed. As of the Petition Date, the Debtor's limited partnership interests were held: (a) 99.5% by an entity called Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust (Mr. Dondero's family trust—described below), (c) 0.0627% by the retired co-founder of the Debtor, Mark Okada, personally and through family trusts, and (d) 0.25% by Strand. These limited partnership interests were in three classes (Class A, Class B, and Class C). The

Mountain Trust (previously represented by Sullivan Hazeltine Allinson and Rochelle McCullough); and (c) NexBank (previously represented by Alston & Bird).

Class A interests were held by The Dugaboy Investment Trust, Mark Okada, and Strand. The Class B and C interests were held by Hunter Mountain Investment Trust and Hunter Mountain. The significance of this is that 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. And, of course, Mr. Dondero's recovery on his equity interest in Strand 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 paid.

B. The Dugaboy Investment Trust ("Dugaboy") and Get Good Nonexempt Trust ("Get Good")

The Dugaboy and Get Good Trusts are represented by the law firm Heller Draper & Horn.

Mr. Dondero is the beneficiary of Dugaboy and the settlor of Get Good (and family members are the beneficiaries). It has been represented in pleadings that Get Good is a trust established under the laws of the State of Texas. It has been represented in pleadings that Dugaboy is a trust established under the laws of the State of Delaware. At least as of the Petition Date, an individual named Grant Scott (a long-time friend of Mr. Dondero's, who is a patent lawyer and resides in Colorado) is the trustee of both. Mr. Dondero's sister may also be a trustee of Dugaboy.

As mentioned above, Dugaboy owns a 0.1866% of the Class A junior limited partnership interest in the Debtor.

Get Good has filed a proof of claim in this Bankruptcy Proceeding (submitted by Grant Scott). Dugaboy has filed several proofs of claim in this Bankruptcy Proceeding (all were submitted by Grant Scott). The court is not aware of the nature or amount of these claims, except the court has been apprised that: (a) one Dugaboy proof of claim alleges that Highland is obligated on a debt

owed to Dugaboy by an entity known as Highland Select, allegedly because Highland is Highland Select's general partner and might also be its alter ego; and (b) another proof of claim asserts postpetition mismanagement by the Debtor of assets of one or more Debtor subsidiaries. While the court knows nothing about the Get Good proof of claim, it does know that the Get Good Trust (along with others, including Grant Scott) has been sued for alleged fraudulent transfers in an adversary proceeding in this case (Adv. Proc. # 20-3195)—which may affect the allowability of its proof of claim.

C. Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NPA") (sometimes collectively referred to as the "Advisors")

These entities have been represented by the K&L Gates law firm at times and currently are represented by the law firm of Munsch Hardt Kopf & Harr. The entities are registered investment advisors that previously had shared services agreements with the Debtor.

It has been represented that Mr. Dondero directly or indirectly owns and/or effectively controls each of the Advisors. He is the President of each of them.

It is the court's understanding that both of these entities withdrew their original proofs of claim. However, the Advisors filed an application for an administrative expense claim on January 24, 2021, relating to services the Advisors allege the Debtor did not perform under a shared services agreement. The Debtor has since filed an objection to the claim and the matter is set for trial on September 28, 2021. Further, the Debtor has filed an adversary proceeding (Adv. Pro. # 21-3004) alleging that HCMFA owes the Debtor an aggregate of $7,687,653.07 pursuant to two promissory notes and the Debtor has filed an adversary proceeding (Adv. Pro. # 21-3005) alleging that NPA owes the Debtor $23,071,195.03 pursuant to a promissory note.

D. *Highland Funds I and its series Highland Healthcare Opportunities Fund, Highland/iBoxx Senior Loan ETF, Highland Opportunistic Credit Fund, and Highland Merger Arbitrage Fund, Highland Funds II and its series Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Fixed Income Fund, and Highland Total Return Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, Highland Income Fund, Highland Global Allocation Fund, and NexPoint Real Estate Strategies Fund*

These entities are represented by the K&L Gates law firm. They are apparently each managed by the Advisors and these funds are specifically managed by Mr. Dondero as portfolio manager.

The court has no idea who owns these companies (assuming they should be regarded as separate companies). The court does not know which, if any of them, have filed proofs of claims.

E. *Charitable DAF Holdco, Ltd. ("DAF Holdco"), Charitable DAF Fund, LP ("DAF"), Highland Dallas Foundation, Inc., ("Highland Dallas Foundation")*

These entities are represented by the law firms of Kelly Hart Pitre and Sbaiti & Company PLCC.

It has been represented to the court that the DAF is managed by DAF Holdco, which is the managing member of the DAF. It has further been represented to the court that DAF Holdco is owned by three different purported charitable foundations: Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc. (collectively, the "Highland Foundations"). DAF Holdco is an exempted company incorporated in the Cayman Islands. Grant Scott has apparently, until recently, served as its managing member. The DAF is an exempted company incorporated in the Cayman Islands. Highland Dallas Foundation is a Delaware nonprofit, nonstock corporation.

Mr. Dondero is the president and one of the three directors of each of the Highland Foundations. Apparently, Grant Scott was recently replaced by a former Highland employee named Mark Patrick (who is now an employee of Skyview Group, an entity created by former Highland employees). Although the Debtor is the non-discretionary investment advisor to the

DAF, the Debtor does not have the right or ability to control or direct the DAF or CLO Holdco. Instead, the DAF takes and considers investment and payment advice from the Debtor, but ultimate decisions are in the control of Mr. Patrick, presumably at Mr. Dondero's direction.

The court is not aware whether these entities have filed proofs of claim. However, they, along with Messrs. Dondero and Scott, CLO Holdco and the Get Good have been sued for fraudulent transfers in Adv. Proc. # 20-3195.

F. CLO Holdco, Ltd.

This entity was previously represented by the law firm of Kane Russell Coleman & Logan and more recently is represented by the law firm of Sbaiti & Company PLLC.

CLO Holdco is a wholly owned and controlled subsidiary of the DAF. CLO Holdco is an exempted company incorporated in the Cayman Islands. CLO Holdco has filed two proofs of claim in this Bankruptcy Proceeding. Both proofs of claim were submitted by Grant Scott in his capacity as Director of CLO Holdco.

CLO Holdco, along with Messrs. Dondero and Scott, DAF Holdco, DAF Fund, Highland Dallas Foundation, and the Get Good have been sued for fraudulent transfers in Adv. Proc. # 20-3195.

G. *NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes, Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by any of the foregoing and any of their subsidiaries (sometimes collectively referred to as "NPRE")*

These entities are represented by the law firm of Wick Phillips Gould & Martin, LLP.

The entity known as HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) is alleged to owe the Debtor over $11 million pursuant to five promissory notes (as asserted in Adv.

Pro. # 21-3007). The court understands this same entity has filed a proof of claim relating to its alleged interest in "SE Multifamily Holdings, LLC," which has been objected to and has not been resolved.

The court has no idea who owns or manages these companies or what exact function they play in the Highland complex of companies. The court does not know anything about the substance of the proof of claims.

H. Highland Capital Management Services, Inc.

This entity appears to be represented by both Wick Phillips Gould & Martin, LLP (which also represents NPRE) and Stinson L.L.P. (which also sometimes represents Mr. Dondero personally).

This entity earlier filed two proofs of claim that were objected to and disallowed. Also, this entity is alleged to owe the Debtor approximately $7.7 million pursuant to five different promissory notes (as asserted in Adv. Pro. # 21-3006). The court has no idea who owns or manages this company or what exact function it plays in the Highland complex of companies.

IV. Disclosure Requirement

Accordingly, in furtherance of this court's desire to be more clear about the standing of various of these entities, and to assess whether their interests may be sufficiently aligned, in some circumstances, so as to require joint pleadings (rather than have a proliferation of similar pleadings) it is hereby **ORDERED** that:

Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);[10] (b) whether Mr. Dondero or his family trusts have either a direct or indirect

[10] With regard to any minor children who may be beneficiaries of trusts, actual names should not be used (Child 1, Child 2, *etc.* would be sufficient).

ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims).

End of Order